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TITLE "Marital Responsibilities in the Shulchan Aruch: An Annotated Translation"

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MARITAL RESPONSIBILITIES IN THE

SHULCHAN ARUCH -

AN ANNOTATED TRANSLATION

by

Mark Steven Kram

Thesis submitted in partial
fulfillment of the
requirements for Ordination

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Referee,
Professor Alexander Guttmann

DIGEST

The eight chapters that were translated in this thesis are part of Shulchan Aruch, Eben HaEzer, the section of Joseph Caro's work which discusses the laws pertaining to marriage and divorce, and related topics. Chapter 69 gives an overview of a man's obligations to his wife, and his children, and her responsibilities to him. Chapter 70 discusses in more specific terms how a man is obligated to his family. In it, certain situations are detailed in which the wife's support needs are taken care of if the husband should move away from home. Also, the amount of food he is required to give her is elaborated upon.

The husband's obligations to children are treated in Chapter 71. And in Chapter 72, Caro refers anyone who may be interested in the outcome of a man forbidding his wife by vow from deriving benefit from him should refer to another part of the Shulchan Aruch.

The laws pertaining to a Mored or Moredet, a husband or wife who are sexual refusors, are discussed in Chapter 77. In this chapter, the wife's and husband's rights are enumerated by the author in specific terms in regard to property rights should this occur, and what the wife may lose of her Ketubah as a result of her refusal.

In Chapter 78, we learn in what ways and to what extent a man must ransom his wife if she is taken captive. The chapter briefly comments upon the situation concerning a Cohen and his obligations to free his captured wife even though he is not permitted to re-unite with her once free.

Laws concerning medical care of the wife are dealt with in Chapter 79 in regard to the husband's responsibilities as well as the heir's responsibilities to the wife should the husband pre-decease her. Finally, Chapter 80 deals with the wife's obligation to do different types of labor, and the situation where the couple may be wealthy enough to buy slave-girls to help the wife and what her work obligations are in that case. The chapter also describes the types of work she is not required to do because of possible injury to herself.

The concluding chapter gives a summary of the thesis taking note of certain themes contained in it. There are short discourses on the following: mutual obligations of the Ketubah, the wife, obligations to the children, sex attitudes of Judaism, humanity of the Jewish law, and medical knowledge of the time specifically pertaining to the women during and after pregnancy.

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INTRODUCTION

The Shulchan Aruch, written by Joseph Caro (Spain-Palestine, 1488-1575) is generally accepted by traditional Judaism as an authoritative guide for traditional Jewish practice. Moses Isserles (Poland, 1525 or 1530-1572) wrote his own commentary to the Schulchan Aruch which was included into the code as the Ashkenazic opinion and custom accompanying the Sephardic pronouncement of Caro. Isserles' commentary (mapah or "tablecloth") made the already widespread code - the Schulchan Aruch ("the prepared table") - even more acceptable to world Jewry in that it supplemented the practices from Sephardic lands (Spain, Portugal, etc.) to those from the traditionally Ashkenazic countries (Eastern Europe).

The major part of this thesis consists of an original annotated translation of eight chapters of part of the book called Eben HaEzer ("rock of help") dealing with marital responsibilities. The chapters are separated into distinct units where the first part consists of a translation of the text of the laws and the second part, a translation of the commentary or notes concerning the text, appropriate for the complete understanding of the text itself. The notes succeed each chapter rather than following the entire translation or placing them at the bottom of each page so that the reader may read the text unincumbered by extraneous material.

However, they were placed at the end of each chapter translated so that the reader may easily refer to them in order to clarify the meaning of the text. In many cases, the text is unclear without referring to the notes themselves.

The text itself was translated literally, therefore there are not quotation marks, except in an instance where the meaning of the text was made clearer by their inclusion. The notes were translated in three ways. Where a direct quote, indicated by quotation marks, is written as such, the citation after it is as follows - (H"M). In the case of a note restating the content of a particular commentary, it appears as - (See H"M). The last notation is the case where I wanted to add something in my own words in order to make the text more readable. This is noted by - (cf.)

Also, in the text, brackets [] denote my own insertion in a literal translation where the flow of the language is aided by the added line. Parenthesis () indicate either parenthesis in the printed Hebrew version of the text or an additional explanation that I did not want to add to the notes at the end of the chapter. In addition, there is a list of rabbinical authorities at the end of the thesis consisting of a short description of those individuals referred to in the translation.

I would like to thank Dr. Alexander Guttman for being

an inspiration to me in my study of the material presented here through his warmth and conviction for the traditional law and codes. I would also like to express my thanks for the great amounts of time and energy he unselfishly devoted to help me complete this work.

Above all, I would like to dedicate this thesis to my wife Mindy for her never-ending encouragement to me in my rabbinic career and for her love which she imparts to those around her, to me, and to our own special marriage relationship by which I was drawn to its study in our traditional Jewish sources.

HOW A MAN IS OBLIGATED TO HIS WIFE
AND CHILDREN. 7 paragraphs

1 When a man marries a woman, he becomes obligated to her in ten ways, and he obtains rights from her in regard to four matters, even if they are not written down.¹

2 These are the ten ways [in which a husband is obligated to his wife]: sustenance,² rainment, [the marital duty of]³ intercourse,⁴ the basic Ketubah, her health needs, her ransom if she is taken captive, her burial, her sustenance from his estate and her dwelling in his house after his death while she remains a widow, his daughter's sustenance [from his estate] after his death until their betrothal, and the male children which she has by him shall inherit her Ketubah besides the portion which they receive with their brothers.⁵

3 These are the four rights [due to a man from his wife]: her handiwork,⁶ anything she finds,⁷ usufruct,⁸ her inheritance.

4 Her earnings corresponds to her sustenance.⁹ Therefore, if she should say,¹⁰ "I do not wish to be sustained," and "I do not wish to do any work,"¹¹ we heed her.

HAGAH: See a note below, Chapter 80. There are those who say that concerning any woman who says, "I do not wish to be sustained," and "I do not wish to do any work," the ordinance is cancelled, and she is not able to rescind it¹² and say, "I want to be sustained," and "I will work." (Beit Yosef in the name of R. (Rabbi) Nisim Gerondi, who wrote thus in the name of R. Meir HaLevi). There are some who disagree with this¹³ (R. Yitzhak, paragraph 23). Any woman who is not sustained, does not receive "rainment" because it is included together with sustenance. (Ibid. in R. Nisim Gerondi).

But, as for the husband who says "I will not sustain you" and "I will not take any of your handiwork," we do not heed him. (Note inserted)--But he may say "Keep your handiwork in lieu of your sustenance. And that which is not enough [to equal the sustenance] I shall supplement to you."¹⁴ (R. Nisim Gerondi in Chapter "HADAR".)

5 If she says "I will not grant you usufruct and I do not wish that you free me if I am taken captive," we do not heed her,¹⁶ lest she become mixed in among the¹⁷ Gentiles.¹⁸ --And likewise, pertaining to inheritance and burial, no woman is allowed to say "I do not wish to be buried," and "I do not wish to inherit." But rather, they are [indeed] buried and they [do] inherit. (R. Nisim Gerondi, Chapter NA'A'RAH).

6 If the husband stipulates that he is not obligated
 [to perform] one of the [ten] duties that he is [normally]
 obligated to perform, or if the woman stipulates that she
 is not obligated to the husband in one of the [four] duties
 that [normally] is his due [from her], the conditions are
 valid, except in regard to three matters which the condi-
 tions ~~made~~ under stipulation] are invalid. They are:
 [the marital duty of] intercourse,¹⁹ the basic Ketubah,²⁰
²¹
 and her inheritance.

7 What we said, that the stipulation in order to depart
 from [the matter of] "her inheritance", is invalid applies
 to stipulating with her [either] after the marriage (i.e.,
 wedding) or before betrothal. But concerning stipulations²³
 made with her while she is betrothed, [this] takes affect.
 (See the note below, chapter 92. They say, our rabbis of
 blessed memory, there is no most proper (i.e., pious) wife
 except the one who complies with the wishes of her husband.)
 (Notes on Maimonides Chapter 15 in the name of Tanna D'bey
Eliahu.)

Notes to Chapter 69

1. Specifically in the Ketubah or even without a Ketubah being written at all, the woman automatically secures these ten rights, and the man secures the four rights. (cf. H"M, note 1)

2. Appropriate rainment: that is, for the winter, she will not wear ragged clothes, etc. (cf.)

3. Maimonides said that sustenance, rainment, and marital intercourse were Toraitic requirements. Also, the requirement of marital intercourse varies according to the profession of the husband. (cf. H"M, n. 3)

4. The 200 zuz he must give her if he divorces her or if he dies. This is the basic amount in the Ketubah if she was a virgin when married. If she was not a virgin, the basic Ketubah is 100 zuz. (cf.)

5. The male children which she sires by him shall inherit a larger portion than her sons not sired by him. The former will inherit a portion (i.e., her Ketubah) in addition to the equal portion as is due the latter. (cf.)

6. The rabbis ordained that she does her handiwork in

order to get sustenance and clothing from her husband. Some rabbis disagree and say that she only gets sustenance for her handiwork. (cf. B"SH, n. 1)

7. The rights of using and enjoying the property or substance or other thing belonging to another without impairing the substance. (cf.)

8. The dowry: "During her lifetime, he (the husband) has use of her inheritance." Mishnah Ketuboth 6:1

9. At first, the rabbis ordained her sustenance, and only afterwards did they ordain that her earnings (lit., "the work of her hands") should belong to him. In any case it is for her good that it was intended. (See Taz, n. 2)
(Note Mishnah Ketuboth 5:5)

10. The exact wording she must use in both "I don't want to be sustained," and "I will not work". But we do not heed her if she is working but says "I do not want to be sustained," and "I will not give you [of what I am working for]." (cf. Baer Hetev, n. 2)

11. She should not refuse to work except in the case [of doing work that] she may hurt or bruise herself as in spinning wool, and that which is not for the needs of the

household. But grinding (milling), baking, cooking and doing other household work she must do as if she were being sustained. (See H"M, n. 4)

12. She does not have the right to change her mind every time she wishes to. If so, when she does not find (proper) work [that she agrees to do], she will want to be sustained. And when she [does] find work that appeals to her, she will say "I do not want to be sustained" because this would violate the spirit of the law. The same is the law: she also gets no rainment because it is included in the sustenance. (cf. H"M, n. 5)

13. Some say that a woman can change her mind since there is a set amount of earning she must make weekly. For example, one week, she may use the fruits of her work for her own use, and the next would be devoted to the husband. She has the upper hand in this, not the husband. (cf. H"M, n. 6)

14. Provided that she is agreeable to this. (cf. Baer Hetev, n. 3)

15. See above note 7.

16. Rabbi Nisim Gerondi cites another reason that the

husband has another advantage in freeing her, [that is] that he will have a wife to serve him. (cf. H"M, n. 8)

17. Idol worshippers, literally, but the editor of the codes, as in many other Jewish writings changed the original designations Goy or Nochri to an innocuous term in order to get past the eyes of the censors when books were printed in environments hostile to the Jews. (cf.)

18. Likewise, the ordinance is not for the good of either the man or the woman alone so that one could say "I do not want [to do] the ordinance of the rabbis." But rather [th~~is~~ ordinance was issued] for the good of both. And it is not possible that one prevent the good for the other. (See H"M, n. 9)

19. Marital intercourse is not contained in this category because it is not in the category of "acquiring" (kin-yan), since there is no monetary exchange with this. We learn that a man is not allowed to swear abstinence from intercourse, and if he does, this is one of the few cases where a woman could lawfully demand a divorce from her husband. Another commentator says that this is not allowed because it is bodily suffering to refrain from it. (See Baer Hetev, n. 4, Pitchei T'shuvah, n. 3, H"M, n. 10)

20. Most commentators agree that the Ketubah is a rabbinical institution, in any case, the sages made a strong point on their saying "one who grants less than one-tenth of the Ketubah, behold it is whoredom." Another rabbi says a Ketubah is necessary because a man is not allowed to dwell with a woman without a Ketubah. (cf. H"M, n. 11, Taz, n. 4)

21. See notes above.

22. A man cannot relinquish that which he is entitled to inherit. During betrothal, he is not yet entitled to inherit, so nothing needs to be said. Before betrothal, there is no connection or status between the man and woman. After marriage (i.e., the wedding), the man cannot then make stipulations, for the agreement has already been concluded. (cf. H"M, n. 12)

23. Thus, if the husband stipulated with her during betrothal that there would not be written in the Ketubah mortgaging of land, it takes affect. (See Baer Hetev, n. 5)

THE LAW [AND] OBLIGATION TO SUSTAIN HIS
WIFE AND CHILDREN, AND WHETHER HE IS RE-
QUIRED TO HIRE HIMSELF OUT. 12 paragraphs

- 1 To what extent is a man obligated to sustain his wife? She eats and drinks of the same [food that] he eats and drinks. And if the members of her family²⁴ are ac-²⁵customed to high living, he must treat her accordingly.²⁶ [But] if they are not all²⁶ accustomed to high living, he is not obligated to treat her in this way when she eats²⁷ with him. -But when she is not eating²⁸ with him,²⁹ he is required to treat her in the same manner she was accus-
tomed to [while living] in her father's house. (Tur)
- 2 A husband who wishes to give his wife appropriate sustenance, in order that she eat her meals alone, is permitted to do this, provided that he eat with her on Friday night. --(There are those who disagree and hold that he cannot say that she should eat alone unless she willingly agrees to this.) (Tur in the name of Talmud Yerushalmi and in the name of Rabbenu Asher; and Beit Yosef in the name of the majority of the halakhic authorities); and this appears to be the correct view.³⁰
- 3 How much food does one provide for his wife?³¹

Food sufficient for two meals daily: ³² a minor dish (a relish, for instance) to eat with bread, the oil for eat-³³ ing purposes and for light, and a little wine to drink [only] if it is the custom of the area for women to drink wine. -- And if the woman is nursing ³⁴ a child, they give her [some] wine. (Tur) -- In addition, on Shabbat [the man provides her with food sufficient for] three meals. ³⁵ [He should give her] either meat or fish. Every week he should also give her a little money for her needs. ³⁶ -- (He also gives her firewood for cooking.) (Rabbi Nisim Gerondi, chapter AF Al PI). -- To whom does this [requirement] refer? To impoverished Jews. But, if one is wealthy, all [of his actions] must be according to one's financial situation. -- If she decreased [what she ate] and leaves some of ³⁷ this food over, it then belongs to the husband. (Tur.) -- And if he was so extremely impoverished ³⁸ that he could not even provide her with the food ³⁹ she needs, ⁴⁰ we force him ⁴¹ to divorce her.

HAGAH: And the Ketubah (the payment to her upon divorce) shall be upon him as a debt until he succeeds in obtaining [the money] and then gives it to her. (Tur in the name of Rambam). There are those who say that we do not force him to divorce her since he did not [actually] have it (food). (Rabbi Yitzhak in the name of Rabbenu Tam). One ⁴² who has food for only one day is obligated to provide sus-

tenance from it for his wife or to eat it with her (i.e., have a joint small meal). (Tur in the name of R. Meir HaLevi). There are those who add that ⁴³ he is required to hire himself out ⁴⁴ as a laborer, in order to provide sustenance for his wife. (Tur in the name of R. Eliah, and R. Meir of Rothenburg in the name of our teachers in France.) If he had land, the wife is permitted ⁴⁵ to take her sustenance from the produce of the land or from the land itself (by selling it) or he must sell it. (Shlomo ben Adret, Chapter 890).

4 One who marries a woman who ⁴⁶ subsequently becomes insane, ⁴⁷ is obligated to support her and to provide for her health needs. --(See below, chapter 119, para. 6 ⁴⁸, where he wrote the opposite ⁴⁹).

5 If the wife of a man who travelled to a distant land ⁵⁰ went before the Beit Din ⁵¹ to [file]a claim for sustenance, for [a period of] the first three months from the day he set out, they (the court) do not assign food for her because it is assumed that a man does not leave his family barehanded.

HAGAH: But, if she delays speaking to the court, and afterwards she makes a claim, they do not provide food for her retroactively, ⁵² but only from the day on which the claim was made, even if the Beit Din delays the judgement. (R. Nisim Gerondi, chapter SH'NEI DAYYANEI GEZEIROT.) There

are those who say that if he left her because of a quarrel, and wanted to desert her, they should provide her with food immediately because [in that case] he surely left the family with nothing. (Mordechai in the beginning of chapter DAYYANEI GEZEIROT.)

From this point onwards, even if she has no Ketubah⁵³ [we provide her with food], but we do not give her things⁵⁴ to adorn herself with. And if the husband had possessions, the Beit Din takes possession of them and sells them in order to support the man's wife, even if they (the court, and/or the family) did not hear a report of his⁵⁵ death. And do not make an account with her⁵⁶ concerning her earnings until her husband returns. If he finds that⁵⁷ she has worked, they (the profits) belong to her. And thus, if she has not appeared before the Beit Din, but sold⁵⁸ [his possessions] herself in order to get sustenance, her sale is legal and she does not need to make a public announcement [concerning it], neither has to swear an oath until her husband returns and claims it, or until she comes to collect her Ketubah [money] after his death, and then he may make her swear that she did not sell except for [obtaining] sustenance that she needed.

6 One who becomes insane or deaf (the court) assigns (from the husband's property) jewelry (including cosmetics) for his wife. -- (And his wife is maintained from his possessions.)

7 [In the case of] a man who went to a distant land
 (literally, to a land at the sea) and entrusted his vessels⁵⁹
 to someone or loaned them to him we reclaim them from the
 trustee in order to provide sustenance for his wife.⁶⁰

HAGAH: [This is the case] even if the husband or-
 dered that [the vessels] should not be given [to his wife].
 (Thus wrote R. Yitzhak in a Responsum citing Mordechai,
 Chapter DAYYANEI GEZEIROT.) But if the trustee returned
 the deposited vessels to the husband after the wife made a
 claim [on them] to the court, he (the trustee) is required
 to pay her [for them]. (Ibid. Mordechai) When they are
 claimed from the trustee, we do not reclaim except property
 necessary for only six months. Even if the trustee is will-
 ing to give more we withhold the husband's money [from her]
 for six months⁶¹ only, and no more. (Ibid.) But we do not
 reclaim some of [his] possessions which (e.g., as collateral)
 are held by others⁶² while there is non-mortgaged property.⁶³
 (Beit Yosef in the name of Responsa of Shlomo ben Adret.)

But we do not reclaim [the possessions] from the bor-
 rower until the end of the term of his borrowing.

8 [If] her husband left, and she borrowed⁶⁴ [food from
 others], and she ate [it], he is required to repay [those
 whom she borrowed from].⁶⁵

HAGAH: The lender makes a claim to the wife [for
 repayment], and she makes a claim to her husband. But if

the wife is not present, the lender makes a claim to the husband. (R. Nisim Gerondi, Chapter SH'NEI DAYYANEI GE-ZEIROT). But if the wife remits [the debt of] of husband, the creditor has nothing (no claim to make). (Mordechai, Chapter YESH NOCHALIM). If the Beit Din allots sustenance for her and orders someone to maintain her and to collect [money] from the husband's possessions; if the husband has died, he (the one maintaining her) has nothing (no claim) over her. But if they (the rabbinical court) merely said in a general way to loan [food, etc. to] her, if the husband has died or [if] he has nothing to pay [with], and she gets an inheritance from another source, she [then] must repay [him].⁶⁶ (This is the implied meaning in a Responsum of Shlomo ben Adret which Beit Yosef cites).

If someone should arise and out of his own free will maintain her from his possessions, the husband is not obligated to repay him,⁶⁷ and he wasted his money (in that he cannot reclaim it).

HAGAH: There is no difference whether her father or someone else maintain her. But if there were [people] obligated to the husband (Owed him money, etc.), and they maintained his wife, we deduct it (sustenance of his wife) from his debt [to the husband]. (All this is in the Notes on Mordechai to Ketuboth). And if her father arises and maintains his daughter [along] with his son-in-law⁶⁸ even

here, there is no need to repay him (the father). Only his (the husband's) sustenance [is repayable], not that of his daughter. (Terumat HaDeshen, Chapter 317) [Should] she not borrow, but only sell her possessions and maintain herself, [then] she has no claim on him, and she keeps her earnings.⁶⁹ (R. Nisim Gerondi in the beginning of the chapter SH'NEI DAYYANEI GEZEIROT).

9 The husband who says to his wife at the time he set out, "Take your handiwork for your sustenance," and she was silent⁷⁰ (she raised no objection), she has no sustenance [claim from her husband].

10 In the case a [woman] went to court (to file a suit for support), and the court decided that she received sustenance and the Beit Din sold [the husband's property] and gave [the proceeds] to her; or she sold [his property] for herself (i.e., for her sustenance); when the husband returned,⁷¹ he said, "I left sustenance for her"⁷² (therefore, the property should not have been sold). She must⁷³ make an oath by holding [a holy] object that he did not leave [anything] for her. And if she neither made a claim nor sold [his possessions], but only (borrowed or) waited until he returned, and when he says, "I left food for you," and she retorts, "You did not leave [anything], rather I borrowed from this person, and I maintained myself," he⁷⁴ must make a vow of exemption that he did leave her

[something], then he is free from [paying],⁷⁵ and the obligation [to pay] remains upon her.--(But the man is not believed when he says that he gave her [something] for the future.⁷⁶) (R. Nisim Gerondi, the beginning of ALMANAH NIZONET)--And if she sold movable property and said, "I sold it (the chattel) for sustenance," and he claims, "I left you sustenance," she must make a vow of exemption that he did not leave [anything].

HAGAH: [If] he makes a claim⁷⁷ saying, "She should have spent her earnings for her sustenance," if she borrowed [food, etc.] without [the authorization of] the Beit Din, and she is a working woman, in that her earnings would be sufficient for major necessities (literally, "things"),⁷⁸ though not for minor things, his claim is valid. But if the Beit Din has ruled that she receive [sustenance], it is necessary that her handiwork be sufficient for every need⁷⁹ (literally, "everything"). (All of this discussion is in the Tur).

- 11 If she neither made a claim, borrowed [anything], nor sold [anything], but merely pushed herself day and night to work and she supported herself [from her earnings], she has⁸⁰ nothing (no claim to her husband). But if she worked, and there remained [something] leftover for her (after she had taken her sustenance from it) it belongs to her.

12 [In the case of] a woman who left her husband's
house and went to another house (to live), if she came⁸¹
(to court) with the claim⁸² [which said] that he was liv-
ing in the neighborhood where calumnies are being spread
about her, and the like, he (the husband) is obligated to
sustain her there, if she makes a claim for sustenance.
Whereas, if she does not make a claim, she forfeits [her
claim] concerning her sustenance for the preceding period
(before she went to court).

HAGAH: The same is the law: If she had a quarrel
with her husband and she had not been living with him, and
she was separated from him and she borrowed for suste-
nance, he (the husband) must repay [what she borrowed].
But if he was separated from her, he is not required to
repay, for a man is obligated for his wife's sustenance⁸³
only when she is with him. (Mordechai, Chapter SH'NEI
DAYYANEI GEZEIROT and as Beit Yosef writes in the name of
R. Yomtob ben Abraham), and only if her husband is in the
[same] city. But [if] her husband is not in the city,
there are no consequences if she went to her father's
house. And concerning the housework (i.e., if she neglects
the housework if she was ill) it is obvious that he is obli-
gated [to sustain her], for a person who is ill cannot work.
But if she is not ill, her sustenance is deducted from her

according to what he (the husband) must pay to hire someone⁸⁴
 to do minor household work for him. But she does not
 suffer a loss in her sustenance on account of this (for
 not working because of sickness), only as a result of her
 (potential) earnings if she can work (but did not do so).
 (All of this is in BEIT YOSEF, Cahpter 77 in the name of
 Responsa of R. Shlomo Ben Adret). In a situation where he
 (the husband) is obligated [to give her] sustenance, even
 though her husband makes a public declaration that no man
 should loan her [anything], and he is in the city, and she
 does not make a claim on him in court, and she borrows
 [from someone], he is obligated to pay (for what she bor-⁸⁵
 rowed) for he does not have the right [to do this], pro-⁸⁶
 vided that she did not have enough from her earnings.
 (Responsa of R. Shlomo ben Adret, Chapter 492).

Notes to Chapter 70

24. "As is written: 'She is a married woman' (Genesis 20:3), meaning that she improves [her status] with him (her husband), but does not diminish [her status] with him."
(Taz, n. 1)

25. If it was public knowledge that her husband-to-be was not as wealthy as her father, and she also was aware of it but agreed to marry him anyway, this is not considered to be a "diminishing" of her status. The latter would be the case only where the husband does not live up to the financial means he does have. (See H"M, n. 1)

26. If her children, while living in her father's house, were accustomed to wealth, but they have no wealth themselves, they cannot demand to be treated as if they were wealthy. (See Taz, n. 2)

27. "According to the opinion of Isserles in a nearby passage, we have to say that 'she does not eat with him' means that she is willing to do this. In any case, she could say, 'I do not consent [to eating alone] unless he give me [food] as was customary in my father's house...'
(B"SH, n. 1)

28. "This law was written by Tur according to the opinion of Rambam who holds that the husband can say to her (his wife), 'Eat with me only on Friday night,' even if she does not consent to this.... But according to the opinion of Talmud Yerushalmi and as Isserles decided in [his] notes, no husband can force his wife to eat alone, unless she consents to it...." (H"M, n. 2)

29. "Note B"SH. One [may] demand from her husband that he give her sustenance and good food during the three or four weeks after giving birth, for it is the way with women to lie in bed from the time of giving birth for four weeks and [for the husband] to hire a woman servant for her, as is the case with our wives. And if the husband does not wish to do this, we (the rabbis) force him to do it. (R. Shlomo Luria in Responsa, paragraph 45)." (Baer Hetev, n. 1)

"[In the case of]: A man who wishes to move out of his city in order to live (assumed temporarily) in another land because he is unable to make a living in his city, but his wife does not wish to [go along], the man is no longer obligated [to her] for [the requirements of] rainment and marital intercourse. (Shabbatai Cohen, section 2, paragraph 36, and see paragraph 75). Rambam reasons that since those obligations (rainment and marital intercourse) are Toraitic,

that [punishment for non-compliance with] the oath [that the man swore in the Ketubah] does not occur. (The majority agree with this)." (Baer Hetev, n. 1)

30. Here, there is no distinguishing between wealthy families and those not so wealthy. Here, the text is worded as if speaking about a poor Jew. (See B"SH, n. 2)

31. If his wife eats with him, and he is poor and does not have relish [to eat], but only dried bread, as stated before, if she is eating with him, she shares this. But from the way of Rambam's wording, this is not the correct meaning, rather he says that even when his wife eats with him, even though he eats dried bread, he should honor his wife more than himself, and he should give her relish and oil and other things [even if he does not eat them]. (See H"M, n. 3)

32. "This corresponds to fifteen meals per week: two meals every day, one meal on Friday, three meals on Shabbat, one meal on Motsei Shabbat. On Shabbat he [should] give her bread and meat with every meal. See Note in B"CH." (B"SH, n. 3)

33. "See a note in R. Nisim Gerondi who wonders at R.

Yitzak Alfasi: Why did he omit that which is said in Gemara: 'If she is accustomed to drinking two glasses of wine [when she is eating] with her husband, provide it for her. When she is not [eating with] her husband, [give her] one glass. And if she is accustomed to one glass [of wine when eating] with her husband, one does not provide her when eating elsewhere even with a very small amount, for wine leads to [sexual] desire.' (H"M, n. 4)

34. "[Then] give her a small amount of wine in any case, for wine fortifies the [mother's] milk. But one does not give her more than one glass as we (the rabbis) have written in Ketuboth (page 65a): Two glasses [of wine] disgrace a woman." (H"M, n. 5)

35. "'Three meals of meat.' Rambam reads 'and meat'. See note in B"CH." (H"M, n. 6)

36. "That is to say, for her other minor needs. For example, laundering and bathing. For this small amount of money, she gives him the extra earnings. The woman may say, 'I will not take this small amount, and I do not give [you] the extra, (i.e., my extra earnings).' But the husband cannot do this. See notes below Chapter 80." (H"M, n. 7)

37. What happens to food she is provided with, but does not eat? How much should a husband provide for her (since all women eat different amounts)? They concluded that what is left belongs to the husband if the woman eats to her satisfaction. The husband is not required to give his wife more food than she needs. But if she is voluntarily forcing herself to eat less, or if she is pressed in some way so that she is not able to eat, then this is not to be considered the regular amount she normally eats which the husband now is only required to provide her with this lesser amount. (See Pitchei T'shu'va, n. 1)

38. If he is extremely poor and cannot even hire himself out to work because he is ill, etc., he is nevertheless forced to divorce his wife, if he does not want to work. If he would like to work, but cannot, he is not forced to divorce her. (See Pitchei T'shu'va, n. 2)

39. "If he is able to give her bread but not relish or oil, or the other things (as above), in any case he is not forced to divorce her for [the lack of] these things." (H"M, n. 9)

40. The statement of the Gemara, one who says, I do not want to support or sustain [my wife], he must divorce

her, meaning (by implication) that this is to be done even if the husband has possessions is to exclude Samuel's opinion who holds that if he has possessions he is forced to sustain his wife and not to divorce her. B"CH says that if forcing him to sustain her does not work, then the court forces him to divorce her. (See H"M, n. 10)

41. "From her marriage contract we learn, as is written in it: 'I will work for you, honor, and support you...' Rabbenu Tam wrote that no proof is derived from this for this refers to those foods that correspond to her handiwork, and it is self-evident that he is not forced to divorce her." (Taz, n. 3)

42. "That is, we do not say that he should leave over for himself food for thirty days as is the case when he has to share his food with animals." (H"M, n. 11)

43. "From her marriage contract we learn, as is written [in it], 'I will work for you, [and] honor...you.' If so, even if he can provide her with food in a small amount, he is required to hire himself out [in order] to provide her with food according to her honor. As is written, 'I will work for you, honor...'" (H"M, n. 12)

44. "This is the opinion of R. Eliah, and from her mar-

riage contract we learn, as is written in it, 'I will work for you, support...' Rabbenu Tam differs [in his interpretation], [he says] that 'I will work,' means work, as is the way to do it: to labor and to plough." (Taz, n. 4)

45. "The language here is not exact for the choice (to sell the land) is not [actually] in the wife's hands. This is the understanding of R. Shlomo ben Adret: If the produce is enough [to sustain] both of them (husband and wife), the husband must sustain his wife and himself from it. Whereas, if the produce is not sufficient (for both), the Beit Din must force the husband to sell the land to have it (sustenance), or the Beit Din (a rabbinical court) must collect sustenance for her from the same land, even though it may not be sufficient as a collateral for [the amount of] the Ketubah [price]." (H"M, n. 13)

46. "But, if she was [already] insane at the time of the marriage, they (the rabbis) did not ordain marriage [as binding] with her. But if she subsequently became insane, he is required to support her and to provide for her health needs. He is relieved of this obligation only by divorce, but he is not permitted to divorce his wife who has become insane. Even if she provides none of her own handiwork (she does not work), he is required to support her." (H"M, n. 14)

47. The only way a man can relieve himself of the obligation to sustain his wife if she has become insane after marriage is to divorce her. But a Jewish man is not allowed to do this. (See B"SH, n. 9)

48. "I have written in Chapter 119, they speak here concerning an insane woman who is not able to keep her Get (she loses it). Therefore, the husband cannot divorce her, as according to the Toraitic law." (B"SH, n. 10)

49. "There is no contradiction here, as follows. It is written (in another source) that he is not obligated to provide for her health needs. This applies [to the case] when he is willing to give her her Ketubah [price (the 200 zuz)]. And as Magid Mishneh (Yomtob Vidal) wrote there: Chapter 3, Hilchot Gerushin. Here the discussion concerns [the situation] where he does not wish to give her her Ketubah. See below Chapter 79." (H"M, n. 15)

50. "But [if] it was known that he travelled to a nearby place with the intention of returning forthwith, but he subsequently settled there permanently, [the judgement is to] provide [food] for her, even if it is within the three months [period], Beit Yosef in the name of R. Yomtob ben Abraham." (H"M, n. 16)

51. A rabbinical court consisting of three judges (rabbinical) who would decide religious as well as civil cases. In the middle ages, it functioned as an arm of the self-governing Jewish community which possessed powers of law enforcement. (Encyclopedia Judaica 4:725)

52. Even though a widow has sustenance retroactively as long as she has not waited until three years have passed, as is written in paragraph 93, a married woman does not get it retroactively. Thus writes Ramban and R. Nisim Gerondi... (See B"SH, n. 12)

53. "That is to say, even though there is [cause] to care in case she forewent the Ketubah in favor of her husband (and said, for example, "I do not want the Ketubah"), and anyone who foregoes a Ketubah in favor of her husband, cancels all the conditions of the Ketubah as is clarified below in Chapter 93, paragraph 9, even while he (the husband) is still living, according to the opinion of Rambam. But the rest of the authorities (who decide halakhic issues) disagree with him." (H"M, n. 18)

54. "Since her husband is not present, there is no need to adorn oneself. 'Adorning' is explained by Rashi as cosmetics which women are accustomed [to use]." (Taz, n. 6)

55. "They should assign food for her even if they have not heard that he (her husband) died. And not as... Rav (Amora Rav) who said: if it has not been heard that the husband died, an oath is necessary." (B"SH, n. 14)

56. "Thus writes Rambam and Ramban and R. Shlomo ben Adret. But HaMagid wrote there is proof in support of this from a sugia (a Talmudic discourse) there (Ketuboth 48a). [If] she is a minor and [even if] she has enough income from her earnings [to sustain herself], in any case we give her sustenance. From this we understand that even if it is known to the Beit Din that her earnings are sufficient for her needs, we still provide her with sustenance... Even though the Beit Din assigns food for her, and does not make a strict accounting with her against her, he (the husband) has a claim with the one who loaned the food. This applies if he loaned her food without a court order. Then, even though her earnings are only sufficient for major things, and not for minor things, one may say to the loaner, you should not have loaned her, for she could have decreased her needs. If he loaned her with a court order, then if her earnings are sufficient for all of her needs including minor things, but the Beit Din neglected to make an accounting with her (concerning her earnings) one may say to the loaner, you should not have loaned her. But if [her earnings] are not sufficient for everything [she needs], he (husband)

has no claim on the loaner because she went to the Beit Din [and] revealed her intention that she did not want to reduce her needs. Thus it appears to me, according to the opinion of Isserles. But his words are not convincing. It appears more plausible that since it was done by permission of the Beit Din, she has no claim on him (the husband)." (B"SH, n. 16)

57. "This is the wording of Rambam; but R. Nisim Gerondi wrote that Rambam's opinion is that if the husband returned and did not find anything of her earnings, it is a loss (to him)... And thus wrote Rabbenu Asher: When the Beit Din assigns sustenance for her, examine precisely first of all if her earnings will be sufficient for her. And as against her handiwork, do not assign to her the amount corresponding to her earnings, only the balance..." (H"M, n. 20)

58. "...[If] she did not work, but [did] sell his possessions on account of her sustenance needs, the husband suffers the loss, and we do not take from her [the remainder of] that which she sold and ate. This is the obvious meaning of R. Nisim Gerondi's (explanation) that if he does not find anything [remaining] of her handiwork (her earnings), it is his loss..." (H"M, n. 22)

59. Vessels such as utensils, tools, and implements.
(cf.)

60. "It is established for us that we do not reclaim them from mortgaged property for sustenance for the woman. Therefore, we do not claim them from the one who borrowed until the end of the [agreed upon] term of the loan, since during the term, the vessels are tied down. But the law concerning the object deposited is as they were a creditor, and we claim [them] from the trustee even if there is another creditor." (B"SH, n. 19)

61. "In any case, we do not give over to her all of the money (withdrawn for the six months). Rather we leave the money with the trustee or another [trusted] person, and we maintain her and provide for her from it (as she needs)..." (H"M, n. 23)

62. "This means when she has a claim upon the possessions..." (B"SH, n. 21)

63. "...R. Shlomo ben Adret says: As long as there are non-mortgaged possessions (not deposited, i.e., still in the house and not designated as collateral for a loan) the wife can neither collect nor reclaim [the deposit] from the trustee. But [in the case of] one who has money

deposited with another person, and also [has] movable property in his house, it seems that the deposited money is non-mortgaged property like the chattel in the house, because the trustee has no claim on the deposit..." (H"M, n. 24)

64. Many commentators including Tur, Mordecai ben Hillel, Rabbenu Asher, and notes on Asher wrote that he must repay those from whom she borrowed only if there were witnesses present when she borrowed. This is also the case if her original intention (that is, to borrow for strictly sustenance purposes) was not known until later. (See B"SH, n. 22)

65. "In Tur it is written if she borrowed in the presence of witnesses, it indicates [repayment]. But if there are not witnesses, the husband could say, 'I do not believe that she borrowed [anything].' ...Even though she did not say in front of witnesses, 'I am borrowing for sustenance needs,' or the lender did not say, 'I am lending [this] to her for her sustenance,' [the husband still must repay the loan] since at the time of making the claim she admitted that she borrowed for her sustenance, and he (the husband) admits that he did not leave her any food, the loaner can collect [money] from her husband. For the text says only that 'she borrowed and ate,' it does not say

(literally, "teach"), 'she borrowed for sustenance needs.'
(H"M, n. 26)

66. She must repay it to the loaner all the more so if she has personal possessions at the time she borrowed the sustenance. (See H"M, n. 28)

67. It makes no difference whether he sustained her in a general way or whether he sustained her as it was the duty of her husband. (See B"SH, n. 25)

68. "The husband must repay [his father-in-law] for his sustenance even though the father sustained him in a general way, and [even if] he did not say [explicitly] to his son-in-law that he had to repay him... In Terumat Ha-Deshen [it says]: [If he says] 'Live with me,' he is free from repayment. [But] one who says, 'Eat with me,' he is obligated to repay him, this reverses the decision..."
(B"SH, n. 28)

69. "It seems that they say that a woman who is able to work, and if she would reduce [her needs], her handiwork (earnings) would be sufficient [for her]. But in years of famine (hard times generally) when her handiwork is not sufficient...he (the husband) should not say, 'Take your

handiwork for your sustenance.' How much the more so (should she not sustain herself) if she is not able to work at all! Why should she lose her possessions that she sells for he (the husband) has no claim upon her? (She should keep her possessions and file a claim with the court). How can he say, 'Take your handiwork for your sustenance,' if she does not work at all, or if her handiwork is not sufficient for even one-half of her sustenance?...Even if she sells her usufruct property (which he has use of)" it is considered within limits because her husband still has no claim over her for repayment for what she sells. (cf. H"M, n. 32)

70. Her silence indicates acceptance of the husband's terms. But if she protests by saying that she wants more for her sustenance than her handiwork provides her with, then the husband's order to her does not hold. She is permitted to reject the offer since sustenance is a basic marriage responsibility of the husband, he must provide it if his wife so desires. (See H"M, n. 33, Baer Hetev, n. 24)

71. Pertaining to anything the wife sells of his, she must make a Mishnaic Oath. This means a Shein Nig'p J, that is, taking an oath while holding a holy object such as the Bible. If she borrowed from others and came to him to collect payment for what she borrowed, he should swear an

oath of exemption that he denies the debt entirely. If he claims that he provided for her while he was away, he is believed with an oath. (See B"SH, n. 31)

72. The same is the law: If he (the husband) claimed, "I said to her, 'Keep your earnings in lieu of your sustenance, and she was silent (she did not object), 'in either case then she has to make an oath on a holy object and is believed. (cf. H"M, n. 35)

73. The husband who makes a certain claim is believed by the oath he makes to carry out the payment for what the court provided for her. (See H"M, n. 36)

"She makes an oath on a holy object" means even if the court sold the chattel. But if she sold it, she need not make an oath on a holy object; except in cases where she sold real estate or chattel which she would not be able to deny was the husband's later. But chattel for which she would be able to deny she sold later, she must make an exemption oath. (See Baer Hetev, n. 26)

74. הו'ה הו'ה is an oath of exemption administered by the rabbis or rabbinical court to the defendant who denies the debt completely, releasing him from payment of the sum of money in dispute. This is compared to a legal oath which is required when the defendant admits a

part of the claim (but not the whole). It is presumed that none will go to court unless he has a claim to make. (cf. Jastrow)

75. "Not only must he make an oath thereby freeing him [from the debt], but even if he made a deposit to the one who is sustaining his wife, he [should] make an oath and take his deposit [back]. (R. Shlomo ben Adret, Chapter 884.)" (Baer Hetev, n. 27)

76. Since the time for the need of the food has not come yet, a man is not believed when he says. "I paid the debt," within the time period the debt was due for repayment. (cf. H"M, n. 38)

77. As in paragraph 8 in this chapter, when she borrows anything, he is obligated to repay the loan. This means only if he does not make a claim (against her words that she did borrow). The court does not initiate this claim. But if he makes a claim, it is valid. (See B"SH, n. 32)

78. Since [her handiwork] is sufficient for major necessities, she should have reduced [her needs] prior to appearing in court. But if she appeared before the court [and] argued her position that she did not wish to be main-

tained so frugally, then her claim may be valid. (cf. B"SH, n. 33)

79. When the Beit Din assigns sustenance to her, they also look carefully into her earnings, and they only provide for her only above and beyond what she obtains from her earnings (i.e., the balance). (cf. H"M, n. 40)

80. "That is to say, that she cannot make a claim to him for the surplus of her earnings (generally), for in every [case] like this she yielded the surplus to her husband. Only in principle is the ordinance of the sages that he gives her some money (in return for her handiwork). But he cannot reclaim the surplus (of her earnings) from her (in this instance) for [in the case of] a husband who does not provide his wife with sustenance, his wife keeps her earnings, even if done silently (with no announcements) ...". (H"M, n. 41)

81. That is, to clarify, that her claim was true, for there is reason to suspect (assume) that her claim is true. (See H"M, n. 42)

82. This means definite matters, but if it is general (non-specific) talk, she is not believed. (See B"SH, n. 34)

83. Even for one who holds the opinion that the husband may take care of his wife for the time of his absence with an agent, she may not provide for him in the same manner, even though she does not refuse him marital intercourse and she agrees to come to him at the time of the marital duty. She is obligated to be with him always, and she should have sex with him and eat with him on Friday night. And if she should leave him, she has no sustenance claim upon him even according to Bircat HaBayit. (Bircat HaBayit is the principle that the more members of a family living together in the same house, the less the expenses for the head of the household. Should someone leave the house, they may receive the same amount it cost the father while living under the same roof, and no more.) (cf. B"SH, n. 35)

84. This means only in principle (a priori). But, if she has not worked and she borrowed (ex post facto) for sustenance needs, he must repay what she borrowed, and he does not deduct what she did not work for (failed to earn). (Sustenance is the primary obligation of the husband; that the wife should work is a later rabbinical ordinance). (cf. H"M, n. 44)

85. הוא לא עשה is a Talmudic idiom which means, "He does not have the right [to do...]." (cf.)

86. If she was deficient with her handiwork, whether he publically decreed that no one should lend her anything or if she was silent on this matter, he could have said to her either, "You should have reduced your needs," or "Keep your earnings for your sustenance," thereby not being obligated to her for the sustenance. (See H"M, n. 45 and B"SH, n. 36)

71 A MAN IS OBLIGATED TO SUSTAIN HIS SONS AND
 HIS DAUGHTERS WHEN THEY ARE MINORS. 4 paragraphs

1 A man is obligated to sustain his sons and his daugh-
 ⁸⁷ters until they reach the age of six, ⁸⁸ even if they have
 [their own] property ⁸⁹ inherited from their maternal grand-
father's estate. From then on (after six), [one] sustains
them according to the ordinance of the sages: until they
 ⁹⁰reach the age of maturity. But if he does not want [to
sustain them], we rebuke him and shame him and we urge him
[to do so]. But if he [still] does not want [to sustain
them], we make a public announcement concerning him saying,
"so and so is a cruel, terrible person for he does not
want to sustain his children. He is less than an unclean
species of a bird which does sustain his chicks!" But we
[still] do not force him to sustain them. To what does
refer? To one who is not wealthy. But, if he was wealthy,
in that he had enough money to give to charity to support
them, we collect [the money] from him against his will for
 ⁹¹charity, and we sustain them [from it] until they reach
 ⁹²the age of maturity.

HAGAH: This only [applies] to the matter of suste-
nance of the daughters. But we do not force him to give
 ⁹³his daughters away in marriage. Even though it is a

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 mitzvah [for him] to give his daughter a proper dowry,
 in any case, we do not force him (as to the amount he
 should give as dowry), rather whatever he wishes [to give]
 he may give, only that [he must] see that they are given
 in marriage. (Notes of Mordechai in KIDDUSHIN and thus
 writes TOLDOT ADAM V'CHAVA (R. Yeruham ben Meshullam)
 Chapter 22).

2 [In the case of] a man who travelled to a distant
 land and leaves his children here (at home), we sell from
 his possessions for [their] maintenance until they reach
 the age of six.⁹⁵ But from the age of six upwards, we do
 not sustain them out of his property.⁹⁶

HAGAH: There are those who say that this applies only
 [in the case] where he has not begun to sustain them after
 the age of six.⁹⁷ But [if] he has begun to sustain them
 [after the age of six],⁹⁸ they are sustained from his prop-
 erty, for it is certain that it would be pleasing to him to
 do this. (Mordechai, chapter NA'ARAH in the name of R.
 Yitzhak.) There are those who say that if he is wealthy, we
 sustain them in any case, handling it as an act of charity.
 (Such is the understanding in Tur.)

3 [In the case of] a man who becomes insane,⁹⁹ we maintain
 his sons and daughters from his possessions, even if they
 are older than six,¹⁰⁰ until they reach the age of maturity.

- 4 A man who has intercourse with an unmarried woman, and she has a child from him, if he admits that the child is his he is obligated to sustain him.

Notes to Chapter 71

87. Even if he is not wealthy. But he does not sustain them according to his wealth. He is obligated to sustain them even if their mother died. If the father died and left older and younger children, we divide the property equally among them. There is no need to provide them with sustenance until they have reached the age of six, for the obligation to sustain them until age six is the father's obligation, and only while he is living does the obligation rest on him. (See B"SH, n. 1)

88. We confiscate his possessions if he does not want to sustain them. It is not clear (in the law) to what extent he must sustain them -- whether he does it the minimum amount or the same amount as he sustains his wife, and thereby bringing them up to the level of their mother. (See H"M, n. 1)

89. This applies only when they do not have money, if they do have money (an inheritance, for instance) he has no obligation for their sustenance. (See B"SH, n. 2)

90. The respective ages for maturity for girls and boys are 12 1/2 and 13. (cf.)

91. Drisha (a commentator) asks (points out a difficulty): "Why did he (Caro) write that the father is obligated to provide for them until they reach the age of maturity? For he is surely obligated to support them after that according to the law of charity (which says that a man is obligated to support his relatives if they cannot support themselves, even if they are adults)." The matter is resolved in that the man is obligated to sustain them until they reach the age of maturity only if they can then support themselves, if they are self-sufficient. Generally, a child has no means to do this. Therefore, a man is obligated to support his children until they are self-sufficient (as he would do with his other relatives). (cf. B"SH, n. 3)

92. A man may be forced to give to charity, but not to support his children. (cf.)

93. "The wording is obscure and it intends to say that he is not forced concerning [providing] sustenance as he is forced to give charity. But he is forced to get her a husband. If he finds someone who will take her naked (without a dowry), he is permitted to do so. But if he does not find someone who will take her for nothing (without a dowry), he should give her a minimum of sustenance

(literally, in a reduced amount), so that he will take her, anyone who will. But it is a mitzvah to give her a suitable dowry in order to marry her off to a worthy man..." (H"M, n. 2)

94. "Mitzvah" here means a positive thing to do, a "good deed" and not a religious obligation. (cf.)

95. One commentator writes that the father is obligated to support his children during the first three months he is gone, even though he is not required to do this for his wife. He reasons that this is because the wife can maintain herself from her earnings, and the children only can if they have an inheritance. But the Talmud says that the reason he is not obligated to support his wife during these first three months is that no man would leave his house totally barren, therefore, his wife should have enough for the three months. (See B"SH, n. 5)

96. Ramban cites three cases, each with a different ruling: One who leaves of his own volition, one who becomes insane, and one who is not wealthy. In the first case, we do not maintain them if they are older than six, even if he is wealthy. They hold that we do not confiscate his property in his absence in order to take charity. If he became

insane, we take charity from his possessions, therefore we maintain them from his possessions if he is wealthy, according to the law of charity. If he is not wealthy, we do not confiscate his possessions to support them. (See B"SH, n. 6)

97. Some say that if the father became insane, but he had supported his children before this, then we continue to support them from his possessions. But if he went to a distant land, even if he had supported them before he left, we do not continue to support them because it would not be pleasing to him as it would be in the former case. (See B"SH, n. 7)

98. Before he departed. (cf.)

99. Since he wrote in a general way and did not stipulate: "provided that he is wealthy," the understanding is that he intended to sustain them. Several commentators agree that in the case of a person who became insane, even if he was not wealthy, that generally it would have been pleasing to him if his children were sustained, for one who does not sustain his children is utterly disgraceful. But only in the case of one who went to a distant land do we not support his children, for he would have ordered that it

be done if he had intended it to be so. (See H"M, n. 6)

100. There is a principle which says that if one party makes a sure claim and the other a probable claim, that the sure claim takes precedence. Therefore, even though the wife is believed in her statements concerning whether the child is kosher or not, she is not believed when she says the child is from so and so, if that man does not admit that the child is his. (cf. B"SH, n. 8)

72 THE LAW [CONCERNING] ONE WHO FORBIDS HIS WIFE
BY VOW FROM DERIVING BENEFIT [FOR OR FROM HIM].

One paragraph

- 1 A man who forbids his wife by vow from deriving any benefit from him or who forbids his wife by vow from tasting [even] one of all of a certain species¹⁰¹ or if she should vow it and he confirms it, see a note in YOREH DEAH, Chapter 238, paragraph 3.

Note to Chapter 72

101. Fruits, spices, etc. (cf.)

77 THE LAWS CONCERNING A MAN AND A WOMAN WHO
REFUSE [MARITAL DUTIES] OR A WOMAN WHO SAYS:
"MY HUSBAND IS REPULSIVE TO ME." 5 paragraphs

1 [In the case of] a man who refuses¹⁰² marital duties
and says, "Behold, I am supporting (literally, sustaining
and maintaining) [her], but I am not having sexual inter-
course with her because I hate her," they increase her¹⁰³
Ketubah for her [in] the weight of thirty-six barleycorns
(ritual standard measure) of silver every week, and he may
live with her and not have intercourse with her as long as
she agrees to live with him (under these conditions). But,
even though her Ketubah continues to increase, he trans-
gresses a negative commandment, as is written, "[If he takes
another wife] he shall not diminish [her food, her clothing,
or her marital rights.]" (Exodus 21:10). If she wishes,¹⁰⁴
they (the Beit Din) force him to divorce her immediately,
and to give her her Ketubah. --

There are those who say that if he wants to divorce her im-
mediately,¹⁰⁵ and to give her her Ketubah,¹⁰⁶ they do not
increase her Ketubah. (Thus is the understanding from the
language of Rambam, Chapter 14 of ISHUT.) But it appears
to me that the husband does not even transgress the prohi-
bition "...he shall not diminish..."

2 A woman who refuses sexual intercourse is called "a rebellious wife," and they ask her the reason she refuses. If she answers, "He is repulsive to me and I cannot have intercourse with him willingly," (Note inserted) (she is believed)¹⁰⁷--Only if she asks for a divorce without a Ketubah. But if she says (to her husband), "Give me a divorce and my Ketubah," they are concerned lest she has her eyes on another man, and the law of Moredet applies to her, because she says, "I want him to suffer." (Beit Yosef in the name of Responsum of R. Nisim Gerondi, and thus explains Rashi in the Gemara).--

if the husband wants to divorce her, she receives no Ketubah at all. But she takes her worn clothing,¹⁰⁸ which still exist either from the property she brought to her husband for which he was responsible for in case of loss (סגרא /לכז 'וכז), or from the עיטור 'וכז for which he was not responsible for in case of loss. But she does not take anything of what belonged to him,¹⁰⁹ even the shoes on her feet or the scarf on her head, which he bought for her. She should take them off and give them [to him]. Any gift that he gave her, she returns to him. (There are those who say that she does not take even from the סגרא /לכז 'וכז but only that which she has in her possession. There are those who say that she does not even take עיטור 'וכז, but¹¹⁰ only what she has in her possession.) (Beit Yosef in the

name of Responsum of R. Nisim Gerondi who thus wrote in the name of R. Shlomo b. Adret).

And if she refuses [intercourse] while married in order to make him suffer, saying, "Behold, I am making him suffer thus because he did such and such to me," or "because he cursed me," and other similar things such as these, they send her an agent from the Beit Din and say to her, "You should know that if you continue your refusal, if your Ketubah is 100 menah you would lose it." Afterwords they make public announcements about her in the synagogues and study houses every day for four weeks, one after the other. --There are those who say that there is no need to publicly announce the matter daily, rather only on the four Sabbaths themselves. (R. Nisim Gerondi and notes on Maimonides, and thus is the understanding of Tur). And this seems to me the correct view.--

We say, "So and so has refused intercourse to her husband," After the announcement, they send her to the Beit Din a second time [and say to her], "If you continue your refusal, you will lose your Ketubah [completely], then if she still continues in her refusal, and does not change
¹¹¹ her mind, they warn her ¹¹² and she loses her Ketubah,
 and she will have no Ketubah at all. They do not grant her ¹¹³
 a divorce until twelve months have passed. And neither does she receive sustenance during the twelve months.

--Even if she is pregnant.¹¹⁴ (Beit Yosef in the name of Responsum of R. Shlomo b. Adret). Her earnings belong to her, but he has the usufruct.¹¹⁵ (Tur).--

If she dies prior to receiving the divorce, her husband inherits her property.¹¹⁶ (But he is obligated to ransom her [if she is taken captive], and bury her.¹¹⁷ Tur).

--After the twelve month period, the husband has no [claim] over her,¹¹⁸ and she has no claim concerning him, since she lost the Ketubah, she has no "stipulations" of the Ketubah and he prevents her (from receiving anything) out of his own will. (Words of Isserles, and such is the understanding of Yaakov b. Moses HaLevi, Chapter 20).--

This is the procedure done to her if she rebelled in order to make him suffer. --After the twelve month period, her change of mind is of no benefit to her, but she has lost her Ketubah. However, if he wants to keep her, he must write another Ketubah for her. On the other hand, within the twelve month period, she can change her mind and she [still] has the Ketubah.¹²⁰ If the husband dies within the twelve month period, she receives the Ketubah from his heirs. (All this is in R. Nisim Gerondi, chapter AF AL PI). If the husband wants to divorce her within the twelve month period, he should give her her ^{סך הכסף} and her Ketubah, and everything that he wrote (in the Ketubah) for her.¹²¹ (Beit Yosef in the name of Responsum of R. Shlomo b. Adret). There are those who say that at this time,

since one does not marry two women,¹²² they do not let her wait the twelve month period if the husband wants to divorce her. But if she does not consent (to the divorce) they permit him to marry another woman. (Mordechai, at the end of AF AL PI in the name of Eliezer b. Nathan). There are those who disagree [by saying] they should not permit him¹²³ to marry another woman. (Ibid., in the notes, and in Responsum of R. Shlomo B. Adret, Chapter 860, and Yosef Kolon, Chapter 63). This is the correct view, but only concerning a married woman. But if a betrothed woman rebels against her husband and does not want to marry him, he may divorce her against her will, or marry another woman, and they permit him [to do so]. (Ibid.) It appears to me [thus] only within the twelve month period. But after the twelve month period, if he wants to divorce her, she must accept [a Get] from him against her will, or they permit him to marry another woman. For the wife has no power to prevent him from having a married life forever. And thus it appears (to render a halakhic decision). There are those who say that even within the twelve month period, if the husband transgressed by marrying another woman as a result of his wife's rebellion, they do not force him to divorce [either¹²⁴ wife]. (Yosef Kolon, Chapter 29)-- even if the wife was menstruating or ill in that she was not suitable for intercourse. --It makes no difference whether she began to refuse

intercourse prior to her illness or afterwards.¹²⁵ (R. Nisim Gerondi, chapter AF AL PI, and such is the understanding of Mordechai in the name of R. Eliezer b. Yoel Ha-Levi, and in notes on Alfasi). (There are those who disagree.) (Ibid., in the name of R. Meir of Rothenburg).-- Even if her husband was a sailor whose marital duty was¹²⁶ every six months, and even if he had another wife. Likewise in regard to a betrothed woman whose time to get married has arrived and she refused intercourse in order to make her husband suffer, and she did not marry [him], this is also a case of Moredet with respect to intercourse. There are those who say that even a yebamah (a woman whose husband died without children) who does not want to marry her deceased husband's brother in order to make him suffer is also treated according to this procedure.

3 When this rebellious woman who refused intercourse is divorced after the twelve month period without a Ketubah, she shall return every single thing which belongs to the husband. But pertaining to property she brought to her husband (when they were married), and her worn clothing which are still there, if she took possession of it, we do¹²⁷ not take it away from her. But if she did not take possession of it, they do not give it to her. (She takes the land of *בטא* // *c3* type property.) (Tur.) And likewise, the husband does not compensate her for anything which is lost

from her property of which the husband took responsibility for.

HAGAH: All of this refers to $\int 572 / 113 '00J$. But ¹²⁸
 $\epsilon / 8N$ property is in her possession, and she takes it.
 (Tur.) There are those who say that this refers to a woman who does not give a good excuse and reason to her statement why she said, "He is repulsive to me." ¹²⁹ But in the case of a woman who gives a good excuse to her statement, for example if she says her husband does not act properly and he wastes all of his money, and the like, then they judge her according to the law the Gaonim ordained. (Tur in the name of R. Meir of Rothenburg.) It is called the decision of the academy in that the husband must return to his wife all that she brought to him (at the time of the marriage) in her dowry. This applies to $\int 572 / 113$ property if they still exist and are usable for their original purpose. She takes everything "as is" (in its present condition). But if they (her property) are not usable for their original purpose, how much the more so if they have been stolen or lost is the husband required to repay [her] for everything. The implication for her is if they exist in their original condition or if something came due to it (was traded for it) she takes it. But if they are completely used up, the husband is not required to repay [her for it]. (A decision of the academy of Tur in the name of Alfasi.) But she does not

take anything which he gave her or wrote (in the Ketubah) for her; even if she took possession of it, she must return it [to him]. (Mordechai b. Hillel, chapter AF AL PI.) And they do not force him to divorce [her], nor [do they force] her to live with him. (Also this is in Tur in Responsum of R. Meir of Rothenburg.) But if he acted improperly, in that he betrothed her deceitfully and with bad intentions, we force him to divorce [her]. (Rabbenu Asher, category 35). There are those who say further, that we place a ban of excommunication [upon her]. (Tur in the name of R. Meir of Rothenburg.) If people taught her to refuse intercourse, or that she did it because of anger and quarrel or to draw out his money from him, then even what she took in possession of the property, we take it from her and return it to her husband. (Mordechai b. Hillel, in chapter AF AL PI.) And it makes no difference whether she took possession of it or not, except with her claim of "repulsion" ("He repulses me") and she does not give a good excuse clarifying her statement.¹³⁰ But, in any case, she gives an excuse and there is no deceit in it, the Beit Din passes judgement on it as they see it (according to their discretion). (Jacob Weil, Chapter 1, 7). They can make her swear on this if she claims in truth, "He is repulsive to me." (Ibid.) Thus it is proper to render a halakhic decision. And as long as the husband has not given her a divorce, he cannot force or oppress her. But in any case she cannot give any of her property

to others,¹³¹ and the husband can object to her [giving away things]. If she dies, he would inherit it. (This also Ibid.) Even in a place where they force him to divorce¹³² [her], in the case of a Moredet, if she dies prior to his divorcing her, he inherits her property, for his right to inherit her property is not cancelled except upon actual divorce. (Tur in the name of a Gaon.) If her father took possession of part of the dowry that she brought to her husband (in marriage), it takes affect as if she took possession of it herself.¹³³ (Mordechai b. Hillel in the name of Responsum of R. Meir of Rothenburg.) The clothing which the bride brought (to the marriage) are not included in the law of *קרן* / *ל*3 property.¹³⁴ And *קרן* / *ל*3 type of property is only appraised property which the wife brings [into the marriage] to the husband. (Tur in the name of Rab-benu Asher.)

- 4 A man and his wife appeared before the Beit Din. He said, "She refuses sexual intercourse," and she said, "Not so, (rather) I am with him as normal (I submit to the intercourse)." Thus, if she claims by saying that he refuses intercourse, and he says, "Not so, (rather) I am with her as normal," they excommunicate first the one who is rebellious¹³⁵ and does not admit it to the Beit Din. Afterwards, if they do not admit it, they say to them both, "Be alone together with witnesses nearby."¹³⁶ Afterwards they were alone

and they still make claims against each other, they ask the defendant and they make a compromise (a settlement) according to the authority of the judge.

- 5 A betrothed woman who does not want to marry because of the claim, "He is repulsive to me," her father is not obligated to give to him (the husband to be) that which he promised (literally, decided) to give him in the dowry.¹³⁷

Notes to Chapter 77

102. Mored or Moredet, a rebellious husband or wife can only pertain to sexual intercourse as in B"CH's opinion. For if the man refused sustenance, he must either divorce her or give her sustenance. And if she refuses to work, we force her (even with whips) to work. (see B'SH, n. 1)

103. Thirty-six barleycorns equal three denars as we learn in the Mishnah. These are the denars of the sages; it is 1/8 of that in Tyre (Phoenicia). This corresponds to an increase of 1/2 denar per day excluding Shabbat, for it appears as if it is a payment for the Shabbat but it is not so. Concerning a Moredet in that we reduce the Ketubah, we reduce it also on Shabbat. (See B"SH, n. 3)

104. We do not give him seven days before we force him to divorce her as is the case of a vow in the latter instance for, " *לסוף נד' אכ' כח'ל*," which means, "There is more bread in his basket." In other words, the one with more bread in his basket can wait longer before a legal step will become necessary. He is less frustrated in the case of a vow than in our case in which he does not have "the bread in the basket" or the possibility or desire to wait. (See B"SH, n. 5)

105. The problem here is that it seems from the text that the husband may divorce her without her consent. But, as Helkat Mehokeik says, the husband transgresses a negative commandment in not performing his marital duty; but he is also transgressing a negative commandment if he performs his marital duty without honest intentions. Proverbs 3:29 says, "Do no plan evil against your neighbor who dwells trustingly beside you," meaning that the husband should not have intercourse with his wife while he is thinking to divorce her.

Also, since the ordinance of Rabbeniu Gershom (10th century), the rule was fixed that a man could divorce his wife without her consent. In those cases he would increase her Ketubah and then divorce her. Some authorities say that he need not increase her Ketubah, nor give her sustenance. But, rather, that the ordinance of Rabbenu Gershom intends to allow the husband also to be able to withhold sustenance and her right to clothing until she agrees to accept a Get and allow the divorce. The ordinance was established so that neither could be forced to do that which they did not want to do. But we learn from Helkat Mehokeik that one who divorces his wife is not referred to as a Mored, "rebellious husband" and neither does he transgress a negative commandment. (See H"M, n. 3)

106. They increase her Ketubah in the countries where the ordinance of Rabbeinu Gershom applies. Because if he says that he will not have intercourse with his wife because he hates her, it is apparent that he only wants to divorce her because that is the only way to do it. Therefore, he becomes a Mored in order to divorce her. But in countries where the ordinance is not applicable, and he is allowed to divorce her against her will, they do not add to her Ketubah because he may divorce her without any further loss to himself by increasing her Ketubah. (See Baer Hetev, n. 6)

107. "That is to say, that she asks for only the Get, and all the more so if she says explicitly that she renounces the Ketubah." (H"M, n. 4)

108. The Get is not given to the women until the 12th month. But, in a case of "repulsion" by one partner, we grant the divorce immediately. There are other opinions though. (See B"SH, n. 8)

109. In R. Jacob Weil it is explained that the betrothal presents the husband sent her and likewise the presents that were given on account of his father or his relatives during marriage before wedding time or after, must be returned, as well as the wedding ring. (See B"SH, n. 9)

110. There is a discussion whether the wife obtains her *שבטת* *לכ* or *על* *לכ* property - if it is not in her possession. Many authorities say that she takes whatever remains of the *על* *לכ* '022, even to the extent of taking that which is in the husband's possession. She needs not have possession of it to claim it. But, concerning the

שבטת *לכ*, she must have possession of it in order to claim it. (See H"M, n. 8)

111. The Beit Din first takes council on the matter and warns her about the penalties she will incur. If she changes her mind at that time or up until the last minute, she loses nothing of her Ketubah. If she does not change her mind, then she loses her Ketubah but not all at once - in four consecutive weeks. (See H"M, n. 9)

112. Immediately after the four weeks she has no Ke-
tubah. But we ask the husband not to divorce her immedi-
ately because it is a disgrace to the women of Israel that
their husbands should divorce them on account of a quarrel.
She loses nothing until twelve months have passed. Some
say that, if he divorces her within the twelve-month per-
iod, he must give her her Ketubah and *שבטת* *לכ*
property. (See B"SH, n. 13)

113. The reason that we encourage husbands not to divorce their wives in this case until the twelve month period is over is because within that time one may apologize to the other and she may wish to stay with her husband. But, if he wants to divorce her anyway, he should do it without a Ketubah, but we ask him not to divorce her in any case. With a "rebellious wife" who is rebellious on account of quarrel or other reasons (not on account of repulsivity), he may divorce her immediately after four weeks, and she suffers a loss in everything (all her rights). We do not ask him to delay the twelve months. But some say that, if he wants to divorce her within the twelve-month period, she loses nothing, even one who is a rebellious wife on account of feeling repulsed by her husband. How much the more so concerning a true rebellious wife who is not divorced immediately, she is surely given twelve months. (See H"M, n. 10)

114. "That is to say, that he is only obligated for her sustenance because of the fetus in her womb. But when she gives birth, she is not obligated to nurse the child..." (H"M, n. 11)

115. But he is obligated to free her if she is taken captive, and to bury her. The only right she loses during

the twelve month period is sustenance, but she retains her Ketubah as well as her other rights because he cannot divorce her without a Ketubah and a dowry. But those who say that she has no Ketubah at all during the twelve months also would cancel the "stipulations" of the Ketubah as well. And, if so, the husband does not obtain the income of her property, neither is he obligated to ransom her if she is taken captive, nor bury her because she has no Ke-tubah. (See H"M, n. 12)

116. Even though, according to Caro, she loses her Ke-tubah after the public announcement of her "rebellion", he still inherits her estate, even though he is free from other obligations towards her. The principle is that, if she rebels, she loses rights, but he does not lose what he obtains from her or her estate. (See B"SH, n. 15)

117. Rabbenu Asher reasons that he is obligated to bury her during the twelve months period because he is obligated during that time to grant her her Ketubah rights (other than sustenance - see above). (See B"SH, n. 16)

118. "That is to say, that he does not receive the profits from her property. But, in any case, he inherits her [estate]; and she is not permitted to waste [it] or to

give it to [another] man as a gift...." (H"M, n. 13)

If she has already sold some property or possessions, we must examine whether the husband can cancel the sale. If she says "He is repulsive to me," he may divorce her at any time, and she has no Ketubah. In this case, she is treated as a Moredet. (See B"SH, n. 17)

119. They are the right to items included in the Ketubah which are additional to the amount of the benefits of the Ketubah proper. (cf.)

120. One cannot raise the objection: that she will act cunningly and grieve him till the end of the twelve-month period and then return to the relationship. This is the reason why R. Nisim Gerondi wrote that she cannot return to him after the four week period of public announcement and embarrassment to her. (See H"M, n. 14)

121. There is some disagreement that this is the way it is done. Some other commentators working with different "systems" (opinions) disagree that this is the case, as Caro wrote. (See B"SH, n. 18)

122. That is to say that only during Talmudic times did we wait the twelve-month period for her, for there was no

loss (of sex) to him in this. For he was able to marry another woman (a second). But nowadays, how can we not allow him to marry for twelve months?! Rather, he divorces her after four weeks...or during the four weeks of public announcement if he wishes to give her her Ketubah and divorce her. And we do not prevent him from doing this for he cannot have intercourse even once without a wife. If she does not want to accept a Get, we permit him to marry another woman. (See H"M, n. 15)

123. Some say that, if we would permit him to marry another woman, he could say that his wife is Moredet. He would do this in case he has his eyes on other woman. All commentators reason that he should not be forced to wait twelve months to fulfill the mitzvah of procreation. If he wishes to give her the Ketubah, she is obligated to accept the Get. Even according to Rabbenu Asher, how is she able to refuse him intercourse against his will and how would she prevail over him (in this situation), when he can only refuse intercourse for one week; if he is ill, only six months (explained above, Chapter 76)?! How is she able to grieve him for twelve months?! (See H"M, n. 16)

124. He is not forced to divorce either one. Even though it is written before this that he is not permitted

to marry another woman, if he already had done so, he is not forced to divorce her, for what is done, is done. A particular case where Shimon negotiated the marriage of his daughter to Reuben and Reuben sent wedding gifts to the bride. Afterwards, Shimon reniged on his arrangement to marry his daughter to Reuben, and Reuben claimed that he sent the wedding gifts for the purpose of Kiddushin. In the end, when Reuben saw that they did not want him, he married another woman. And now, Shimon asked for a Get from Reuben and Reuben did not want to give it because of the disrespect (and contempt) that they showed him. (See H"M, n. 17)

125. Since she is able to go to the mikveh, rendering her fit for intercourse, if she rebels, she is called a Moredet. In both cases - menstruation, and illness - she can become suitable for intercourse again; therefore, if she rebels, then she is a Moredet. (See H"M, n. 18)

126. If her husband is a sailor, his minimum marital duty is one time every six months, because of his travels. So, if he is about to go out on a six-month journey and wants to advance his intercourse with her, but she says, "No, and that when you return from the sea we will not have intercourse....," then she is a Moredet. It is the

same case as a menstruating woman who says, "When the time for going to mikveh comes (to purify myself) I will not go", thereby preventing intercourse, even though now she is not able to have intercourse. (See H"M, n. 19)

127. In principle, it means that if she possesses the dowry money, even though she did not bring it with her into the marriage for him, she keeps it. That which she possesses she keeps, applies to the case where "he is repulsive to me." But, in the case of a Moredet, she does not keep the סגור / כ3 property. (See H"M, n. 23)

128. She takes it even from her husband's hands. But what is lost, is lost. (See H"M, n. 24)

129. If she gives a plausible reason or explanation which is recognized by the Beit Din that her testimony is honest so that it is fitting that she should reject her husband, then the husband must return to her all her dowry and property as any woman that was divorced with a Get. (See H"M, n. 25)

There are three parts of the law: (1) a clear claim (explanation), (2) false claims, and (3) an unclear claim.

In case (1), we take from him the סגור / כ3 as well as עליו

properties, and give them to her. In case (3), if she is in possession of property, we do not take it from her. In case (2), we give the husband all the property, even what she brought with her to the marriage. Isserles adds that we even take property from her in this case and give it to him! (See B"SH, n. 27)

130. There are three cases: (1) If it is common knowledge that by such deeds (behavior) she justifiably is repulsed by him, then, according to the law of the Gemara, she takes only her worn-out clothing with her. (2) But according to the laws of the academy, he must return to her all of the dowry that she brought to him, whether it be money or jewelry. And he must repay for objects not used for their original purpose, for, according to her, it was brought to him only for the profits thereof. We may excommunicate her if we find that she was not repulsed by him herself, but rather she only said so from advice of her relatives. If this is the case, she must return everything to him because it is not a claim of "repulsion" but a case of a Moredet. "Possession" with her holds only in a case of "repulsion" and not in the case of Moredet. If she gives an unclear reason for her refusal, she must take an oath to that being the case. Then the case depends on what she keeps of what she possesses. (See H"M, n. 26)

131. It is also her responsibility not to waste that which she possesses in order to have nothing to give to the husband. She should only take her maintenance from the principal, etc. (See H"M, n. 27)

132. There are places where it is the custom to force the husband to divorce his wife in the case of "repulsion". But if there is a case where the husband dealt unfairly with her and married her deceitfully and they force him to divorce her, it appears that if she dies prior to the divorce, he does not inherit her property either. For we say that he married her only to get her money. (See H"M, n. 28)

133. Possession by the husband does not take effect (is not legal) concerning the dowry if it has not left the father's hands. Therefore, there is no need to give it to the bridegroom. (See B"SH, n. 31)

Also, even if the husband possesses part of the dowry, the understanding is that it still legally belongs to the father. And possession by the father is the same as possession by the husband's wife. (See H"M, n. 29)

134. Since the clothes were not placed in the bridegroom's dowry, they are considered

(See H"M, n. 30)

135. It appears that the Beit Din has the power to make the defendant swear as they see fit. (See H"M, n. 31)

136. Rambam: It is forbidden to have intercourse in the presence of any person. The understanding is that, it is also forbidden to have intercourse in the presence of others even if they (the couple) are seen but do not see (the observers). (See H"M, n. 32)

137. The same is the law: If the woman is a נ/כ/ע (a married woman), and the dowry is still in the possession of her father, the father is not obligated to give it to the husband, even if she gave the husband a "document of obligation" *פין גע* he is not obligated to repay him. How much the less should he have to give the dowry to the fiancée of his betrothed daughter! (See B"SH, n. 33)

78 A MAN IS OBLIGATED TO RANSOM HIS WIFE [IF
SHE IS TAKEN CAPTIVE]. 8 paragraphs

1 In what manner [is he required] to liberate her? If she is taken captive, he is required to ransom her, and he cannot say to her, "Here is your Get and your Ketubah, liberate yourself!" [This is so] even if he should say, "I will not ransom you, nor will I take income (from your property)." They do not heed him, rather he is obligated to ransom her.
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2 They do not require the husband to liberate his wife for an amount of money that exceeds her value,
139 but [only] for as much as she is worth as other female prisoners. (There are those who say that his wife is like his own person, and he may liberate her with all [the money] he has.) (Tur and Rabbenu Asher in the name of R. Meir HaLevi as cited in Beit Yosef.)

3 If her value is greater than the value of her Ketubah and he says, "I am divorcing you, and here is your Ketubah, go and free yourself," they do not heed him. Rather, they force him, and he liberates her, even if her value was as much as ten times her Ketubah, and even if he has only enough for her liberation. To what does this refer? To the first time. But if he liberated her and she was

taken captive a second time, and he wants to divorce her, he may divorce her, and give her her Ketubah, and she may free herself. (But if this is not the case,¹⁴⁰ he is not obligated to liberate her a second time.) (Beit Yosef)

4. A man whose wife was taken captive, and he was in a distant land, the Beit Din takes possession of his prop-¹⁴¹erty and sells it by public announcement, and frees her in the same manner in which a husband frees [his wife]. (If he and his wife were in captivity see in YOREH DEAH, Chapter 252).

5 He who makes a vow pertaining to his wife that he is obligated because of it to divorce her and to give her her Ketubah, and his wife was taken captive after he made the¹⁴² vow, he is not obligated to liberate her. For from the time he made the vow pertaining to her, it was obligatory upon him to divorce her and to give her her Ketubah.

6 A Cohen whose wife was taken captive, even though she is forbidden [to return] to him, since prior to this she was permitted to live with him, he liberates her, and returns her to her father's house. Even if he was in another city he attends to her until he returns her to her land. [Then], he divorces her and gives her all of her Ketubah. But, if the husband was an Israelite (not a Cohen), for whom a captive woman is permitted to live with him, they take her back as a wife as she was [in the past]. But if

he wishes afterwards, then he may divorce her and give her her Ketubah. (A female captive who is also forbidden to her husband, an Israelite, in which case we suspect lest she had intercourse (while captive) willingly¹⁴³ as the manner which is explained in paragraph 7, [in such a case] her husband is not required to free her.¹⁴⁴ (R. Nisim Gerondi chapter NA'ARAH, R. Yitzhak Chapter 23).

7 A woman who was forbidden to her husband because of a negative prohibition¹⁴⁵ is taken captive, the husband is not required to liberate her, but only give her her Ketubah and she frees herself. (He also pays her the income which he consumed from her property [while she was captive].)¹⁴⁶ (R. Nisim Gerondi, chapter ALMANAH NIZONET.)

8 The obligation of her liberation is only valid during the husband's lifetime. But, his widow is not freed [by money taken] from his property even if she was taken captive while he was alive. And he did not have sufficient time to liberate her until he died, the heirs (of his estate)¹⁴⁷ are not obligated to liberate her. And even if she is obligated [to marry] her deceased husband's brother, rather she is liberated from her own money or she takes her Ketubah and frees herself.

Notes to Chapter 78

138. Even if they both agreed to this prior to the marriage, it does not take affect lest she be mixed in sexually among the Gentiles. (See B"SH, n. 1 and See H"M, n. 1)

139. It is forbidden that he ransom her for a value of both of them (if they were both taken prisoners). But one may erroneously understand from reading the text that he does not have to ransom her for an amount that exceeds her value. On the contrary, since there is no prohibition from doing so, he is therefore obligated to do it. And furthermore, if both were prisoners, he is obligated to ransom her first, even for an amount which exceeds her value. (See B"SH, n. 2)

140. That is, if he does not want to divorce her, he is obligated to ransom her even the second time she is taken captive. But some say he does not have to ransom her a second time. (See B"SH, n. 4)

141. Although any delay in freeing prisoners is considered to be like shedding blood. Some delay, though apparently not justified, is in this instance permitted. (See H"M, n. 5)

142. He is obligated to ransom her only if the vow was made after she was taken captive. However, if the vow was made prior to her being taken captive, since he was obligated to divorce her (and did not), therefore he is not required to ransom her. But, if he has time to annul the vow he must ransom her. (See B"SH, n. 5-6)

143. For instance, if she was taken captive by the leader (an official) and she thinks that she would become his wife, she is forbidden to her husband for she had intercourse willingly, and he does not have to ransom her. Or if two witnesses heard her say when she was taken captive that she has no desire to be freed, then it is assumed she had intercourse willingly with her captor, then she is forbidden to her husband and he is not obligated to free her. (See B"SH, n. 7)

144. But for the wife of Cohen who becomes forbidden to return to her husband the moment she is taken captive, he is obligated to free her (because he can fulfill the condition of returning her to her land), even if she had intercourse willingly with her captors. (See H"M, n. 8)

145. For example, a widow married to a high priest. (See H"M, n. 9)

146. This applies to the income of her property which he used after she was taken captive, not before. He is obligated to repay her the total sum of the income, but not as in the times when the crops are cheap when he knows he is obligated to divorce her since she is forbidden to him (and he spends all the income). (See B"SH, n. 9)

147. The heirs are not required to repay the wife's income that the husband spent before he ransomed her. But the heirs do not get the income either because they are not obligated to free her. (See H"M, n. 11 and cf. B"SH, n. 10)

79 A MAN IS OBLIGATED FOR HIS WIFE'S MEDICAL
CARE. 3 paragraphs

1 How [is he required] for her medical care? If she
is afflicted with a disease, he is obligated for her med-
ical care whether it requires limited care or unlimited
care. ¹⁴⁸ But his widow is not cured from his property.
Except concerning unlimited care, it resembles [what he
gives] her for sustenance. ¹⁴⁹

2 If the heirs want to make a contract with the doc-
tor in order that she should have limited care, and they
would no longer be responsible for her, they are permit-
ted to do so.

3 If the husband sees that the illness will be prolonged,
he can say to her, "Your Ketubah is before [you], either
heal yourself from your Ketubah (pay your medical expenses);
or I am granting you a divorce and giving you [your] Ke-
tubah." But it is not proper to do so because of derech
¹⁵⁰
eret (common decency).

Notes to Chapter 79

148. Rashi interprets it as one who is not permanently ill. And the law is the same: If she is permanently ailing and the physician wants to receive a certain (limited) fee, and wants to treat her as long as she needs; this is referred to as limited medical care. (See H"M, n. 1)

149. For example, when she is giving birth, he is obligated to give her sustenance as is customary, for the four weeks (after giving birth). (See B"SH, n. 2)

150. The difference between ransoming his wife and providing medical care is that in regards to the former, the husband becomes obligated at the time she is taken prisoner. Whereas, pertaining to her medical care, he is obligated for it every day. Therefore, it is permitted that he divorce his wife during the time she is ill. But since he is not allowed to divorce her against her will at the present time (even though he may be ready to give her her Ketubah and divorce her), he is obligated to provide for her care. (See H"M, n. 3)

If he wants neither to provide medical care for her, no divorce her, they force him to do one or the other. Also, he is obligated to repay for any amount of money she borrowed

for her medical needs. He is allowed to divorce her even though the prohibition of Rabbenu Gershom exists. (It forbids bigamy and allows a man to divorce his wife only with her consent.) (Encyclopedia Judaica 7:512) (See B"SH, n. 3-4)

HER EARNINGS WHICH SHE IS OBLIGATED TO HER
HUSBAND, AND THE LAWS OF NURSING, AND IF SHE
DOES NOT WANT TO WORK. 18 paragraphs

1 Her earnings belong to her husband. How is this to
be done? Everything is according to the custom of the
land. In a place where the custom is for women to weave,
she must weave, or for women to embroider, she must em-
broider, or for [them] to spin wool or flax, she must do
it also. But if it is not the custom for women of the
city to do all these types of work, ¹⁵¹ he cannot force
her to do it, except for only spinning wool. ¹⁵² If she
forces herself and does more than what she could do with-
out special effort, the excess belongs to the husband. ¹⁵³

HAGAH: Only that he give her some money each week as
is explained above, Chapter 70. ¹⁵⁴ The wife can say, "I
am not taking this money, nor am I giving [him] the excess
[earnings]." ¹⁵⁵ But the husband cannot speak thusly.
(Tur in the name of R. Meir HaLevi. And thus writes R.
Nisim Gerondi, chapter AF AL PI. And thus writes the
Sh'el'tot on Parashat Mishpatim.)

2 If he had a lot of money, even if she had many women

servants (slave girls), she is not allowed to sit idly
 without working.¹⁵⁶ For the idleness leads to unchastity.¹⁵⁷ But they do not force her to work the whole day, rather according to the greater amount of money [she brought into the marriage], she may work less.

3 One who makes a vow that his wife shall not work,¹⁵⁸ shall divorce her and give her her Ketubah, for idleness leads to unchastity.

4 And likewise,¹⁵⁹ every woman must wash her husband's face, his hands, and his legs, offer him drink, and make his bed. (There are those who say she is required to make all of the beds in the house.)¹⁶⁰ (Magid Mishnah, Chapter 21 and in R. Nisim Gerondi, chapter AF AL PI.) [Also] she stands and serves him, for example in that she gives him water or a utensil or removes [the dishes] from before him and similar things. But she does not have to stand and serve his father or his son. --There are those who say only when they (the son or father) do not eat at her husband's table.¹⁶¹ (Beit Yosef in the name of R. Nisim Gerondi, chapter AF AL PI.)--

5 These are the types of work (the ones mentioned above) which she does herself, even if she had many women servants;¹⁶² they do not do these types of work for [her] husband, only she does. (There is a disagreement concerning making the bed, see a note on the bed in paragraph 8.)

6 There are types of work which the wife does for her husband when they are poor, these are the types: grinding, baking, laundering,¹⁶³ cooking, nursing her¹⁶⁴ child, and giving the cattle straw, not the bulls.

HAGAH: [If] her child dies, she is not required to nurse (another woman's child) for money and to give the husband the money. Likewise, she is not required to nurse¹⁶⁵ his child of another woman. (R. Nisim Gerondi, chapter AF AL PI.)

7 [If] she brings to her husband a slave girl or prop-¹⁶⁶erty sufficient to purchase a slave girl with, or if the husband has sufficient money with which to purchase a¹⁶⁷ slave girl with, the wife does not [have to] do the grinding, the baking, the laundering, nor [does she have to] give the cattle straw.

8 [If] she brings to her husband two slave girls or the property sufficient to purchase two slave girls with, or if he [already] has two slave girls or enough money to buy two slave girls, the wife [does not have to] cook or nurse her child.

HAGAH: [If] she brings to her husband three slave girls or money [sufficient to buy them], or if he has enough money that he could buy [them] or hire them, she [does not have to] make [all] the beds, only his. (R. Nisim Gerondi in the name of some interpreters.) There are those

who say that she does not even have to make his bed, only to spread the sheets and straighten his bed for it is a way to [show him] love.¹⁶⁸ And every woman does this even if she has many slave girls.

9 [If] she says, "He is able to buy or hire a slave girl," and he says, "I am not able," she has to bring evidence (that she is right.)¹⁶⁹

10 We do not obligate her to do all of these [types of] work, except if it was the way of his and her family to do them.¹⁷⁰

11 All the time that she nurses her child we reduce [the amount] she needs to work, and increase her sustenance with wine and things which are good for [producing] milk.¹⁷¹
--If they did not increase her [food], she must eat her own food if she has some.¹⁷² (Tur.)--

12 They decided how much food is sufficient for her. But she desires to eat more or to eat different foods. Somebody says that the husband cannot withhold [giving her more food or different foods] because of danger to the child, for distress to her body takes precedence. But there is one who says that the husband may withhold [more food].¹⁷³

13 [If] she gives birth to twins, we do not force her to nurse both of them, rather, she nurses one and the husband hires a wet-nurse to nurse the other. (There are those who say that she nurses both children.)¹⁷⁴ (Tur in the name of Rabbenu Asher.)

14 A case where she wants to nurse the child of her friend together with her son, then he may prevent it. ¹⁷⁵

(Even if her son is by another man, the husband is able to prevent it.) ¹⁷⁶ (Tur.)

15 Any woman who refuses to do the work from among the works she is obligated to do, they force her to work.

HAGAH: And the husband does not provide sustenance for her until she does [that work]. Likewise, the Beit ¹⁷⁷ Din excommunicates her or sells her Ketubah to hire a man servant in her place or a woman servant. (Magid Mishnah, chapter 21 in the name of Ramban and R. Shlomo b. Adret.) There are those who say that they force her with whips. (Tur in the name of Rambam.) All this [applies] concerning one who says, "I will not work nor be sustained." But if she says, "I do not want to be sustained, and I do not want to work," she is permitted. ¹⁷⁸ (Beit Yosef according to the opinion of Rambam and thus writes R. Nisim Gerondi.) And as we explained above, Chapter 69. There are those who say that even concerning one who says, "I do not want to be sustained, nor do I want to work," she ¹⁷⁹ must perform the household needs. And pertaining to this, they force her even though she is not sustained. (This is also in Beit Yosef according to the opinion of Rambam, according to one explanation.)

16 [If] he claims that she does not work, and she says¹⁸⁰
 that she does not refuse to work, they place a woman
 between them or neighbors (as observers to see whether she
 works or not).

17 The wife who breaks utensils while she is doing her¹⁸¹
 work in her house is free from obligation (to repay).

18 One who stipulates with his wife that he not be re-
 sponsible for her sustenance, and likewise she should not
 be obligated to him with her earnings. Afterwards, if he
 wants to obligate himself to give her (as a gift) her sus-¹⁸²
 tenance, her earnings do not belong to him.

HAGAH: A woman who was silent and did not ask for
 sustenance, neither for money (to buy her own food), gen-
 erally her earnings with her extra earnings belong to her.¹⁸³
 And we do not say that she forewent her earnings. (R.
 Nisim Gerondi, chapter AF AL PI.) But that which is not
 sufficient for her, the husband is not required to pay her
 (what is lacking) for she surely forewent it (by not speak-¹⁸⁴
 ing up). A woman who left her husband's house because
 of a quarrel and does not want to return to his house until
 he calls her, does not lose her sustenance because of this
 for she is ashamed to return since he drove her out without
 his permission, and he is not friendly to her. But if he
 should come to her, she cannot refuse him anything (of her
 earnings). But if she does not want to come to him until

he pays the debt [that she incurred] for what she borrowed (while they were separated), she loses her sustenance, for it is as if she was a rebellious woman. For every Moredet (rebellious woman) makes some excuse. And every woman is entitled to sustenance. Even though she has no Ketubah in her possession and he is not believed when he says, "She renounced [sustenance]" to him, only with clear evidence.¹⁸⁵ And even for past sustenance, if he did not make a claim, they do not claim it for him, and he must swear that she renounced it to him.¹⁸⁶ (All this is in Responsa of R. Shlomo b. Adret cited in Beit Yosef, Chapter 77.)

Notes to Chapter 80

151. The understanding is that she and her daughter usually do not work at all, but they sit idly. He may force his wife to work with wool (but not flax) because the statement, "Do not sit idly (without working)", also speaks of such a case that they sit idly, but if their way is to work with flax he may force her to do so. If his wife and daughters do not do any special types of work, but only some do one job and some do another job, he may force her to work with wool but not with flax. (See B"SH, n. 1)

152. Spinning flax damages her mouth, even though it is the special work of women to erect the tabernacle in the desert (see Exodus 35:25). Therefore, even though only some types of flax damage a woman's mouth badly when she works with it, the husband is never allowed to force her to work with it. (see H"M, n. 1)

153. An excess would include work done either at night (during normal sleeping hours) or doing two or three different types of work at once, and the husband keeps it. Helkat Mehokeik writes that in his time, in Eastern Europe, the custom was for the husband not to take the earnings from work done by his wife which she forces herself to do. (See H"M, n. 2 and B"SH, n. 2)

154. The husband only gets the excess of her earnings if he gives her some money every week. The one is in return for the other. (See H"M, n. 3)

155. The Ran wrote: 'It is clear that if she can say pertaining to her earnings that are frequent (i.e., something common), "I do not want to be sustained," and "I do not want to work," how much the more so when it comes to an excess which is not common!' (See H"M, n. 4)

156. Even if she says, "I do not want to be sustained," and "I do not want to work," she is still obligated to work because idleness leads to unchastity. (See B"SH, n. 4)

157. It doesn't help (i.e., it is no acceptable substitute for work) if she plays with small dogs or the like (in order to give her something to do), for these types of activities help to keep her from becoming depressed or idiosyncrasy even if they are better than sitting completely idle with nothing to do, she still must work because playing with dogs may result in sexual aberration. (See H"M, n. 6)

158. The husband cannot forbid his wife from work by saying to her, "Do not work," and if he says this, his

words are meaningless unless he connects it with intercourse (marital) or other important things. Neither can any man forbid anyone from doing anything. See Eben HaEzer, Chapter 74, note 2 in H"M) (See H"M, n. 7 and B"SH, n. 5)

159. Every woman must do some form of work even if she or her husband owns many slave-girls or have much money. These are four more things which every woman must do, even if she is wealthy: wash her husband, offer him drink, make his bed, and serve him (at meals). (See H"M, n. 9 and cf. also B"SH, n. 6)

160. Helkat Mehokeik says that only poor women are obligated to make all of the beds in the house. But women who are wealthy, in that they bring several slave girls into the marriage, only have to make his bed alone because it is a sign of love. Beit Shmuel says that even if she is wealthy, she has to make all of the beds in the house, even of those who are house guests. (See H"M, n. 10 and B"SH, n. 6)

161. The main point is that here, the discussion concerns a woman who is wealthy and what household obligations she has. But, the implied meaning is that if there are

guests in the house, she must serve them as well. But her regular duties are according to his or her wealth. (See H"M, n. 12)

162. Rashi holds that it is good advice for a woman to do these types of work for her husband. The other commentators hold that she is obligated to do them. (See B"SH, n. 7)

163. For grinding, she sits at the mill and watches the flour. But these women (of the commentator's time) do not launder, nor do they do the grinding. (See H"M, n. 13 and See B"SH, n. 8)

164. Another interpretation is that she can give the cattle straw because they are not sexually excitable after they feed. But horses and donkeys are excitable after they feed, therefore it may be dangerous for her. (See H"M, n. 14)

165. It is explained in another section that, if she wants to nurse another's child, the husband (has the right) prevents her from doing so. (See H"M, n. 15)

166. Namely, a dowry sufficient to purchase one slave girl with. Or if she saves from his property (by good house-keeping) it is as if she brought the money into the marriage

herself (and therefore can purchase a slave girl). (See B"SH, n. 10)

167. If the husband has sufficient money to purchase a slave girl but does not, they do not force her to do the work. If he wants to buy a slave girl but she does not, they follow what he says. (See Baer Hetev, n. 10)

168. All things which show the husband love are done by the wife alone. (See H"M, n. 19)

169. Since she has to do the work, she can make him swear that he does not have enough with which to buy a slave girl. (See B"SH, n. 11)

170. She is obligated to work with wool and to mix him wine to drink and the like even if it was not done in her family. But she is exempt from doing the types of work mentioned in the Mishnah if her family did not do them. (See B"SH, n. 12)

171. Some commentators write that they increase her sustenance even with that kind of food or drink does not increase the milk while other halakhists differ. (See B"SH, n. 13)

172. "In any case, it seems that the husband must repay her for what she spent out of her property for the child." (H"M, n. 21) She must eat her own food and much of it for the good of the child. (See B"SH, n. 14)

173. If there is possible danger to the child, but only distress and not danger to her, since the child may be affected by this distress to her body, he cannot withhold food because she may be affected by the affect to the child. (See H"M, n. 22)

174. Since there is a disagreement in these laws, she is exempt from nursing both. (See B"SH, n. 16)

It is derech eretz (common decency - the proper action) for a woman to nurse both children if she can. Therefore, it was not written as an obligation, but only that it is proper to do it. (See H"M, n. 23)

175. If she has no child and she wants to nurse the child of a friend, the husband cannot prevent her from doing so. (See B"SH, n. 17)

Helkat Mehokeik writes that the husband may prevent her. (See H"M, n. 24)

176. Even though it is forbidden to marry the former

wife of another man who is nursing a child, it is written that if she wants to nurse for longer than twenty-four months, she is permitted to marry after twenty-four months. (See H"M, n. 25)

177. Either he does not support her, or the Beit Din excommunicates her, but not both. (See B"SH, n. 19)

178. If she says first, "I do not want to be sustained," and then "I do not want to work," we do not force her to work, and she is permitted to do this. And even if she is nursing, he cannot prevent her from saying this. Therefore, in this case, there is no need to give her the additional food she normally receives when nursing. (See B"SH, n. 20)

179. One commentator holds that she must do all the household needs, grinding and the rest, and she is obligated to nurse but not work with wool. Another holds that she is exempt from all work and from nursing. But she is obligated to serve him drink, wash his face, and make his bed. These are the minimum obligations. But Beit Shnuel says they do not force her to do them, but only that it is "good advice" to do them, as Rashi indicated. (See B"SH, n. 21)

180. It was not ordained that she take an oath on his claim, for if she did, they would be constantly involved in making vows and there would be no peace in the home. Therefore, the Beit Din believes what the woman placed between them says even though a woman generally is not fit to give any other kind of testimony. (See H"M, n. 28)

181. One may understand the phrase to mean that she is not responsible to repay for broken utensils only if she breaks them when she is doing housework, but that is not the case. Rather, she does not have to repay for them if they break even when she is not doing housework. (See H"M, n. 29)

182. If he assigns food for his wife's daughter, the daughter's earnings do not belong to him. (See H"M, n. 30)

183. She keeps everything until her husband gives her sustenance for giving him her earnings, and some money for the extra earnings. (See H"M, n. 31)

184. As is noted above, the Beit Din does not assign food to her retroactively for that which she borrowed without witnesses, when the husband made a public announcement

that no one should lend her anything. (See H"M, n. 32)

185. R. Shlomo b. Adret says that she lives with her husband and her legal status is that she has her Ketubah and sustenance until the husband makes a sound claim that she sold or forewent the Ketubah. But even if she did, she still receives sustenance from him while he is living. She receives it until the husband brings evidence that she disclaimed sustenance explicitly. (See H"M, n. 34)

186. Beit Shemuel says that the case here does not resemble the case below that if she made no claim, and was silent, then she obviously forewent the sustenance. He disagrees with Helkat Mehokeik, who says that the disagreement is when she is ill - in which case, if she were silent - she surely does not mean to forego her sustenance. (See B"SH, n. 27)

If she is able to work, and at times she may have an excess (over what she spends), and also at times she may not have enough for herself, in that case, she surely forewent it so that he would not come with her and make an account of what she earns. (See H"M, n. 35)

CONCLUSION

The topic of marital responsibilities in the Shulchan Aruch was chosen by the author in part as a result of an interest in applying traditional Jewish teachings to the modern-day marriage relationship. To this end, parts of the Shulchan Aruch dealing specifically with marital obligations were translated. Throughout the thesis, it can be seen that even though in many instances the husband's rights and the advantages to him seem to outweigh those of the wife, on the balance, considering the time and the setting, the wife's needs were well supported and she was insured adequate protection from all types of calamities and situations: from her being taken captive (see above, Chapter 78) to her gaining rights should her husband move away to a foreign country (see above, Chapter 70). Even though a man is obligated to his wife concerning ten matters, and she is obligated in four ways to him, this likewise indicates the bias of the age when a husband held the major responsibility for his family's welfare and support.

THE KETUBAH

Protection of the wife's rights was the main reason the institution of the Ketubah, the Jewish marriage contract,

was created. In it, the mutuality of obligations between the husband and wife are discussed and laid out explicitly. Concerning these mutual obligations, Professor Zeev Falk in an article entitled "Mutual Obligations in the Ketubah" speaks about two major types of Ketubah in use among different Jewish communities dating from the tenth century onwards. He writes that the Ketubot (plural of Ketubah) are involved in,

"considering the definition of mutual obligations in marital life.... Part of the documents conclude... by mentioning the acceptance of the terms by the bride, while others [different forms of the Ketubah] add a parallel undertaking on her part towards the bridegroom." 187

As stated, the respective parties both are obligated by the Ketubah in certain ways. The Shulchan Aruch discusses this reciprocity in saying that the obligations are binding between husband and wife "even if they are not written down" - specifically in the Ketubah (see above, Chapter 69, and note 1, Chapter 69). This means that the obligations were so primary to marriage that according to Jewish law, it was not necessary that they be explicitly detailed in writing in the Ketubah.

Falk concludes his article by saying that the Ketubah at one time contained both parties' statements of obligation, but that in the last stage of its development the bride's responsibilities were dropped from the text. He describes the possible development as he ascertains it to have been as follows:

"(1) Basically, the Jewish marriage ceremony was one-sided, although the woman had to agree to the man's proposition. During the oldest period the Ketubah would, therefore, recite only the bridegroom's obligations. (2) At a later period, the necessity was felt to add a parallel undertaking on the part of the bride which seemed to have consisted of the reconstructed text...(3) Still later the obligation 'to cherish and honour' was taken over also into the clause of the bridegroom's obligations as a moral addition to the legal provisions...(4) The last step was reached...where the bride's undertaking was dropped altogether." 188

As indicated, in the earliest stage of development, only the man's obligations were described and the woman only had to agree to them for the marriage to be valid. Next, moral obligations were added for the wife, and then included alongside of the legal obligations of the husband. Regardless of how the document was finalized, both parties at one time may have had their responsibilities explicitly named. This was the intent of the sages in commenting directly to how they saw the marital relationship.

Mutuality of responsibility between the married couple was stressed even though not specifically stated in the final re-working of the Ketubah document. The main point for our discussion remains that what is integral is not the obligations themselves, but their mutuality.

Similarly, Rabbi K. Kahana writes in his book The Theory of Marriage in Jewish Law that the husband and wife do not obtain priority in the relationship one over the other. Rather, the union is based upon certain responsibilities to one another,

and to their children. He speaks of the conjugal relationship saying,

Thus it can be said in general terms that from the standpoint of Torah there is no difference in level between husband and wife. It is not a question of superiority or inferiority; there is a difference only in the duties and the responsibilities of each, not in their value as human beings." 189

Further support that a Jewish marriage is based upon "equal responsibility" between husband and wife, and especially of safe-guarding the wife's rights is demonstrated by the fact that during times in our history when a husband was allowed a concubine besides his wife, that the wife retained special status by her receiving a Ketubah (as described above) with all of her rights written in it. A concubine did not receive a Ketubah on the other hand. As Kahana explains,

"The enactments relating to Jewish marriage were intended to strengthen the institution of marriage as a whole. The Rabbis were determined to maintain the dignity of marriage and the strength of the marriage tie....For instance, the Ketubah was instituted to enhance the dignity of the wife..." 190

Jewish marriage differed in purpose from other concepts of marriage of other peoples and religions. Not only does Judaism believe that a man attains a higher level of being when he marries (cf. Pirke d'Rabbi Eliezar, Chapter 12), but also our tradition teaches that the couples happiness existed as the major interest of the sages, from the beginning. In drawing a comparison between English law and Jewish law, Kahana states,

"Whereas other systems, such as English law, which based marriage on the sacrament doctrine, were mainly

interested in dogma, that which mattered most in Jewish Law (in which there was no dogma which dominated and overshadowed the subject) was the paramount concept of the subject itself and its importance for the life and happiness of the people; the Jewish reverence for marriage has its foundation in the mutual respect of husband and wife and their resultant happiness."¹⁹¹

Certain statements may be made concerning the marital relationship as described above. Great emphasis is placed upon the union in regard to the mutually respectful attitude of the couple the tradition places upon it. In a like manner, the tradition stresses the respect and responsibility of the husband wife in the legal Ketubah document which was written for them. Another writer describes the Jewish union and the extended obligations of the husband apart from the basic legal rights his wife has, though he is less equivocal as to the male-centered view Judaism usually has taken,

"Whilst it cannot be said that there was complete equality of status, Jewish Law, unlike English common law prior to the various Married Women's Property Acts, did much to safeguard and extend the rights of a wife. To the Biblical three-fold provision that the wife was to have 'her food, her raiment, and her conjugal rights', the rabbis added the husband's further triple duty of care, consideration and affection."¹⁹²

Moral as well as legal rights obliged the husband to his mate, and as we have already discussed, certain rights were obtained by a Jewish wife even if they were not specifically delineated in the Ketubah itself. On the whole, this attitude of strengthening the Jewish union by these enactments provides us with a certain understanding of how mutual the union at least in

theory was intended to become.

In comparing the Jewish legal system to others, Dr. Ben Zion Wacholder cites the continued importance of the relationship,

"In contrast to the concept of patria potestas in Roman and other legal systems, the halakhah grants many rights to the woman....One may cite many Talmudic passages that stress mutual love and equality between husband and wife."193

Furthermore, a question arises as to how the basic triad of obligations the husband had toward his wife as listed in Exodus 21:10, in speaking about how a man is obligated to a second wife should he marry another, that is her food, clothing, and marital intercourse, became ten rights? And on the other hand, where do his four-fold rights from her, as listed in the translation (see above, Chapter 69) enter the picture? To answer these questions, one may note the intricacies of the above translation and how extremely detailed the sages were in searching out an acceptable level of just functioning for the conjugal union. When one becomes cognisant of this, then one can begin to understand the lengths to which the rabbis would go to ensure meaning between and a workable relationship for the husband and wife.

THE WIFE

Our tradition clearly defines and outlines the wife's position in relation to her husband. She always held a place

of honor which can be seen not only from the preceding discussion of the importance of the Ketubah for preserving her rights and in stating the couples mutual responsibilities, but also by way of the various codes.

"In the Talmud and the Code of Maimonides, it is enjoined not only that the husband must love his wife as much as himself, but also that he must honour her more than he honours himself."194

And as is written in the Shulchan Aruch in a note by Rabbi David ben Shmuel HaLevi, a woman only improves her status with her husband and does not diminish it.¹⁹⁵ And as Professor Elman asserts, concerning the wife's ascent with her husband it

"Means that she was entitled to all the advantages of the wealth and social position of her husband if they were better than hers but she was not to lose the benefits she enjoyed before marriage if these were superior."196

If so, marriage may only be construed as a positive relation for a couple where, at least in theory, the wife's rights were protected. In fact, as Kahana notes,

"There never was in Jewish Law, as obtained in English Law until the end of the nineteenth century, the power of compulsion of the wife by the husband..."197

This not only extended to areas of work, where she was only forced to do the types of work that were customary for woman to do in the country in which they lived (see above, Chapter 80, paragraph 1). Also, she was not coerced to do work which may physically damage or hurt her, such as working with flax (see above, Chapter 80, note 50). Also, when feeding cattle she is

not allowed to feed horses or donkeys because after they feed, they are excitable and may be dangerous to her (see above, Chapter 80, note 62). And she was forced to do some minimal work even if they were wealthy because the sages worried lest she sit idly with nothing to do and bring herself to a situation of unchastity (see above, Chapter 80, paragraph 2, and notes 55-57).

The wife is also responsible to do certain types of household work which serve to demonstrate her love for her husband (see above, Chapter 80, note 66). The Shulchan Aruch speaks of this when referring to her duty of making or straightening his bed daily, even if they own many slave-girls who do all the rest of the household chores (see above, Chapter 80, paragraph 8). Another commentator adds that there are certain other minimum obligations which are incumbent upon the wife besides making his bed alone. These are considered as signs of love which by her doing them, the wife shows appreciation and respect to her husband and their relationship. They are, to serve him drink, and to wash his face (see above, Chapter 80, note 77).

In order to show his wife respect, the husband is asked not to divorce her immediately after the four-week waiting period when the wife refuses marital intercourse thereby losing her Ketubah. The commentator explains that this is so because divorcing her then because of a quarrel (for instance)

would be a disgrace to the women of Israel (see above, Chapter 77, note 11).

OBLIGATIONS TO CHILDREN

Another keystone of the marital responsibilities, included a man's obligation to support his children under many circumstances. To read the text alone without the correlative commentary, one may erroneously understand that he was obligated only until they reached the age of six (see above Chapter 71, paragraph 1). But in fact, that is not the case. Rather, a man is obligated to sustain them, as the commentator explicates, until they are self-sufficient and are able to support themselves! Since generally a child cannot do this, it becomes the father's obligation (see above, Chapter 71, note 69). Interesting to note is the fact that if a man becomes insane his children are supported from his possessions even if they are older than six up to the age of maturity. The sages assumed that he would have been pleased for them to be supported by him under normal circumstances (see above, Chapter 71, note 75), and the law is decided to act accordingly.

Also, a man is required to see to it that his daughter is married off to a worthy man. To this end, if no one will take her without a dowry, then he should provide her with at least some minimal amount in order to find someone worthy (see above, Chapter 71, note 70).

In regard to child support, if the husband moves to a distant land, the law is explicit in its demand for the Beit Din to sell his possessions in order to sustain them. One commentator suggests that the father is even obligated to support the children during the first three months he is away, even though he is not required to do so for his wife (see above, Chapter 71, note 95). From the preceding discussion we may understand that the importance ascribed to obligations to children included not simply a financial quality, but a moral one also.

SEX ATTITUDES

Traditional Jewish sex attitudes have been many and varied. On the one hand, we read in the Shulchan Aruch in Eben HaEzer, Chapter 25, paragraph 2, that according to Isserles (who wrote the Ashkenazic opinion to the code) almost "anything goes" between a husband and wife. As Glasner writes in his article entitled "Judaism and Sex",

"...in the sixteenth century, Rabbi Joseph Karo... recommended great restraint during intercourse... But Rabbi Moses Isserles... in commenting on this passage, asserted: 'It is permissible for a man to do with his wife whatever he wishes. He may have intercourse at any time that he wishes, and he may kiss any part of her body that he wishes, and he may mount her in the usual manner or in an unusual manner...' " 198

One may be very surprised to read such an attitude of liberality coming out of a seventeenth century mind. But as if to

tell those who prurient interests may become aroused, thereby tainting their idea of the religious-pious Jewish life, Isserles adds the following addendum,

"'But although all these things are permissible, one who sanctifies himself by [avoiding] that which is permitted him is considered holy.' Here again we encounter that 'super-halakhic' (extra-legal) standard of morality that may actually have characterized Jewish practice to a far greater extent than the legal permissiveness."¹⁹⁹

The interest in this law comes from the fact that it describes liberality of Jewish sexual attitudes. Through the ages there were always different extremist groups who may have looked at sex negatively and preached a denial of sex as we read in the Wisdom of Solomon (3:13-14): "Happy is the barren that is undefiled, she who hath not conceived in transgression...and happy is the eunuch who hath...[not] imagined wicked things..." But there were also groups which preached the other extreme as the Sabbataians and Frankists who,

"...endorsed all sorts of sexual excesses as divinely ordained measures for hastening the advent of the Messiah."²⁰⁰

More important though, is that Judaism grants to the sexual relationship a realistic place. A story appears in the Talmud in Berachoth 62a concerning the student of Rab who hid under his teacher's bed when Rab and his wife were engaged in sex. After he was caught and found out, he exclaimed that "It is a matter of Torah (sexual behavior), and I need to learn." Surely Judaism places learning above many an ideal, and it considers

sex as a high enough and important part of life to include this story in a Talmudic tractate!

Certainly Jewish law thought that intercourse between (and only for) a husband and wife held so central a position in the marriage relationship that the Shulchan Aruch devoted an entire chapter on special situations of either spouse refusing intercourse to their partner. In fact, the sages created a special terminology in order to define precisely and under what situation a man or woman becomes a "refusor". The law specifies that a woman becomes a Moredet, a refusor, if the husband is repulsive to her and she gives a good reason for it (see above, Chapter 77, paragraph 3). And if the Beit Din accepts her testimony, she even obtains certain rights from her husband (see above, Chapter 77, note 27). But in contradistinction, he must perform the marital duty of intercourse with good intentions (see above, Chapter 77, note 4).

Further, the law supports the couple attempting at all costs to avoid any trouble in the potential divorce situation in that they laid down a method by which the woman may have the opportunity (if she were the Moredet) to renig on her refusal and re-enter the union reinstated with full conjugal rights (see above, Chapter 77, paragraph 2; and notes 10-12). However, she may not simply aggravate her husband in her rebellion by teasing him and preventing future intercourse even when she may be able to have it at those future dates (see above, Chapter 77, note 24).

The halakha discussed the sexual urges and their place in trying to find the mean with which to live by concerning sexual practices. As Louis Epstein describes in his book, Sex Laws and Customs in Judaism,²⁰¹ there were three major attitudes by which to attain this mean. The first point of view was that

"...we should satisfy our bodily needs only to the extent which health and the normal functions of life require. Everything above that minimum is detrimental to the soul..."

This is a basic viewpoint which strives to limit exceedingly any facet of enjoyment in the sexual arena. The second view is that of "intelligent moderation. Under the control of reason, a fair amount of physical satisfaction is wholesome and even beneficial to the soul." With this option, some modicum of pleasure is allowed the couple in sex, but the law takes care not to go overboard in this pleasure. The third opinion is called the "Golden Mean" as per Aristotle. It concedes that sex is acceptable as a corporeal need, but any excess is not considered worthy behavior.

In conclusion, in the code, sex and the laws, attitudes, and beliefs that accompany it came to be out of a milieu of varying opinions and movements as we noted above. The end result of our inquiry into the sexual attitudes of Judaism, we discover in the main, that Judaism walks the middle road between abstinence and total immersion into sexual practices. As Glasner describes it,

"In summary, then, it is extremely difficult to generalize about Jewish sex attitudes and sex practices. The picture that emerges, however, seems to lean in the direction of a frank, non-puritanical attitude of acceptance of sex, accompanied by a rather rigid, self-imposed discipline of restraint."²⁰²

HUMANITY OF JEWISH LAW

An apparant thrust of particularly those parts of Jewish law translated in the above thesis is the sensitivity of the law in many cases towards normal human living. The humanity of the law becomes significant in light of the specific instances where one may have questioned what would be acceptable behavior. For instance, a Jewish man is not permitted to divorce his wife who has become insane.

The codes mention that even in the cases where she provides no earnings to her husband with which he may use them to sustain or care for her, in spite of this, he is obligated to continue to support her (see above, Chapter 70, notes 23 and 24).

Another example of this concern for the well being of the family unit has already been discussed with respect to a father who becomes insane: where do statements concerning care for his children emerge? It was decided that since the father would have preferred they be sustained from his estate, even if he was not wealthy it is carried out (see also above, Chapter 71, note 74).

Pertaining to an oath taken by the wife that she not be ransomed if taken captive, we learn that even if both spouses agreed to this prior to the marriage, "it does not take affect lest she be mixed in among the Gentiles" (see above, Chapter 78, note 36). In other words, it is important to keep the Jewish people a unit and to help any captives of one's family, oaths notwithstanding! Furthermore, the husband is obligated to ransom her for an amount which exceeds her Ketubah value. This is the case even when they are both prisoners. And not only that but he must ransom her first even for an amount which exceeds her value, and only afterwards take care of himself (see above, Chapter 78, note 36). The sages and halakhic authorities thought this to be so incumbent a duty for the husband that they emphasized their feelings by comparing a delay in freeing prisoners like murder itself (see above, Chapter 78, note 39).

Medical care is cited as another example, manifesting concern for basic human values within Jewish law. The Shulchan Aruch asserts that it is not proper for a man to either grant his wife her Ketubah in a case where he ascertains that her illness will be prolonged. The reason named? *Derech eretz* - translated as "common decency" (see above, Chapter 79, paragraph 3). For the rabbis to bring such a non-legal interpretation into the often super-legal text speaks well of the importance of basic relationships between common people.

Derech eretz is assuredly a term which can be understood by all.

The text explains concerning her medical care, that the husband cannot simply throw his wife out of his house should she contract an illness requiring either limited or unlimited care. This line is reminiscent of current health costs in relation to affordability of those costs today when cases arise for individual families who lose entire life savings trying to maintain an ill family member over an extended period of time. Even though the husband's heirs are not obligated for her full unlimited medical care after he dies, they are responsible to attend to her limited care at that time. As they interpret it, the rabbis decided that her medical needs would be taken care of all of her life.

MEDICAL KNOWLEDGE AT THE TIME

Although compared to contemporary standards, the medical practices of the sixteenth and seventeenth centuries were far out-moded, it may be of interest to note a few of the current practices of those times. One such practice was that the wife after childbirth would usually lie in bed for the three or four following weeks, and during that time she may demand from her husband sustenance and "good food". In addition, the husband should hire a woman servant for his wife for that period, and if he refuses the rabbis force him to do

this! (see above, Chapter 70, note 6). To say the least, this is a far cry from a new mother walking from the delivery room after giving birth back to her own room, as we hear today.

Along with childbirth, a nursing mother is encouraged, according to our text (see above, Chapter 70, note 11) to drink a small amount of wine, "for wine fortifies the [mother's] milk." Even today some child-rearing books suggest this practice for modern mothers as a way of relaxing the inhibitions of the new mother and of easing the flow of the milk, though not for the reason of improving the milk's quality. In a book entitled The Complete Book of Breast Feeding, the authors suggest the nursing mother to drink some small amount of alcohol which does not endanger the baby's health. They write,

"Moderate amounts of alcohol - a couple glasses of beer or wine or a cocktail or two in a day - will not have any ill effects on your baby. They may even help to supply him with more milk by helping you to relax...For most women, the early evening feeding is usually the lightest of the day due to maternal fatigue. A pick-me-up before dinner can pick up your baby, too, by helping your let-down reflex to work."²⁰³

Though we cannot be sure what the rabbis had in mind when they said that the wine "fortifies" the mother's milk, we can assume that drinking small amounts of the beverage produced beneficial effects for the mother and child.

SUMMARY

We learn from our reading of the particular chapters translated in this thesis that just as the Shulchan Aruch lays down certain laws and guidelines for behavior in a Jewish context, the sum total of this knowledge is not merely legalistic. On the contrary, we have observed laws which were accepted for humanistic and common decency reasons, those created for purposes of fair play within the marriage relationship. Examples of this were seen with regard to freeing a captive wife and supporting an insane wife. In addition, a man's care for his children extends not simply to their basic needs, but also to his inducement to marry his daughter to a "worthy man". Also, with respect to his wife, though she is obligated to work, it is not incumbent upon her to do those types of work which would cause her physical hurt. Similarly, she is not to remain idle even if she is wealthy and able to hire many slave girls to do all of her household duties for it may not be good for her psychological condition. As a result, she is required to do certain minimum duties which serve the purpose of showing the husband love.

Besides the humanistic bent of the laws, they also deal with reality in life. Even sex attitudes are tempered with the realization that the sexual urge of humans exists and cannot be subsumed under any religious or otherwise suitable

guise. Rather, it becomes something to work with and understand from an "anything goes" attitudes to a self-imposed holy moderation and even abstension in sex. In any case, Jewish law deals openly, honestly, and realistically with this most basic human drive, always maintaining awareness of the human condition.

Some of what has been studied in the above thesis can be applied to one's contemporary moral system in one's continuing search for Jewish meaning in one's life. The remainder of the material covered lends itself to interesting discourse considering the presumption that most of the human population is interested in the ramifications of the marriage relationship, whether it speaks directly to their own lives, or just in order to understand those relationships in the milieu in which we all collectively live in and share. The rest, that which was left undone must be commentary on what we have learned up to this point. It is only our purpose to "go and learn," in order to increase what we have acquired in this instruction for ourselves.

FOOTNOTES

187

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188

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190

Ibid., p. 21. (Also footnote 1).

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Ibid., p. 17. See also Maimonides *Ishuth*, Chapter 15, Section 19 and 20.

192

"Legal Aspects of Marriage" by Aron Owen in Jewish Marriage, edited by Peter Elman, Copyright 1967, The Jewish Marriage Education Council, London, England, p. 121.

193

"Marriage and Divorce" an article by Ben Zion Wacholder, p. 4ff.

194

Kahana, *Ibid.*, p. 19. Also see above Chapter 70, note 8.

195

See note above on Chapter 70, note 1.

196

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198

"Judaism and Sex" by Rabbi Samuel Glasner, reprinted from The Encyclopedia of Sexual Behavior, edited by Albert Ellis and Albert Abarbanel, Copyright 1961 by Hawthorn Books, Inc., New York, p. 582.

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- Solomon ben Abraham Adret - known as "RaShBa," Spain, c.1235-c.1310.
- Alfasi - Isaac ben Jacob, known as "Rif," N.Africa-Spain, 1013-1103.
- Rabbenu Asher - Asher ben Jehiel, known as "Rosh," Germany-Spain, c. 1250-1327.
- Ba'er Hetev - Judah ben Simeon Ashkenazi, Germany, 18th century, wrote brief commentary on Shulchan Aruch.
- Joseph ben Ephraim Caro - author of the Shulchan Aruch, Beit Yosef, Spain Palestine, 1488-1575.
- Taz - David ben Samuel HaLevi, known as "Taz" from initial letters of his work, Turei Zahav; Eastern Europe, 1586-1667.
- Pitchei Teshuvah - Abraham Zevi Hirsch ben Jacob, Eastern Europe, known by the name of his digest on the Responsa, 1813-1868.
- Rabbi Eliah - Eliah Mizrahci, Constantinople, 16th century.
- Eliezer ben Joel HaLevi of Bonn - known as "Ravya," Germany, 1160-1235.
- Tur - Jacob ben Asher, Germany-Spain, wrote the Tur, a halakhic compilation on which Caro modeled his work, 1270?-1340.
- Jacob ben Moses HaLevi - Greece, d. 1636.
- Moses ben Israel Isserles - known as "Rema," Poland, 1525 or 1530-1572, wrote Ashkenazic supplement to Caro's text of Shulchan Aruch.
- Helkat Mehokek - Moses ben Isaac Judah Lima, Lithuania, 1605?-1658, wrote authoritative commentary to Shulchan Aruch, Eben HaEzer, known as H" M in thesis.
- Yosef Kolon - Italy, 1420-1480.
- Rambam - Moses Maimonides, Spain-Egypt, 1135-1204, wrote Mishneh Torah, organized summary of Jewish laws.
- Meir HaLevy - Austria, 14th century.

Meir ben Baruch of Rothenburg - Germany, c. 1215-1293.

Mordecai - Mordecai ben Hillel HaKohen, Germany, 1240?-1298.

Ramban - Moses ben Nachman, Spain, 1194-1270.

Nissim ben Reuben Gerondi - Spain, known as "RaN," 1310?-1375.

Beit Shemuel - Samuel ben Uri Shraga Phoebus, second half of 17th century, Poland, wrote commentary on Shulchan Aruch Eben HaEzer called Beit Shemuel, known as B"SH in thesis.

Rabbenu Tam - Jacob ben Meir Tam, France, c. 1100-1171.

Maggid Mishneh - Yom Tov Vidal of Tolosa, Spain, second half of 14th century, wrote Maggid Mishneh, commentary to Rambam's Mishneh Torah.

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Bach - Joel Sirkes, Poland, 1561-1640.

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